TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 637.

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

STANDARD OIL COMPANY (NEW JERSEY).

No. 638.

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

GULF REFINING CO.

No. 639.

FEDERAL TRADE COMMISSION, PETITIONER,

vs.

MALONEY OIL MANUFACTURING CO.

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

VOLUME III.

PETITIONS FOR WRITS FILED OCTOBER 5, 1922.
WRITS OF CERTIORARI AND RETURN FILED JANUARY 12, 1923.

(29187, 29188, 29189)

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Testimony Taken at Columbus, Ohio, October 28, 29, 30, 1919.

BEFORE THE FEDERAL TRADE COMMISSION.

FEDERAL TRADE COMMISSION, Complainant, vs. THOMAS K. BRUSHART, Defendant.	Docket No. 305.

FEDERAL TRADE COMMISSION, Complainant, vs. THE OHIO CITIES GAS COMPANY, Defendant.	Docket No. 308.

FEDERAL TRADE COMMISSION, Complainant, vs. THE WHITE STAR OIL COMPANY, Defendant.	Docket No. 317.

FEDERAL TRADE COMMISSION, Complainant, vs. THE PARAGON REFINING OIL COMPANY, Defendant.	Docket No. 318.

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FEDERAL TRADE COMMISSION, Complainant, vs. THE HICKOK PRODUCING COMPANY, Defendant.	Docket No. 319.
FEDERAL TRADE COMMISSION, Complainant, vs. THE COLUMBUS OIL COMPANY, Defendant.	Docket No. 321.
FEDERAL TRADE COMMISSION, Complainant, vs. CARBONLESS OIL COMPANY, Defendant.	Docket No. 322.
FEDERAL TRADE COMMISSION, Complainant, vs. THE CANFIELD OIL COMPANY, Defendant.	Docket No. 323.
FEDERAL TRADE COMMISSION, Complainant, vs. THE FACTORY OIL COMPANY, Defendant.	Docket No. 324.

FEDERAL TRADE COMMISSION,
Complainant,
vs.
THE INDEPENDENT DISTRIBUTING COMPANY,
Defendant.
Docket No. 326.

FEDERAL TRADE COMMISSION,
Complainant,
vs.
THE LILY WHITE OIL COMPANY,
Defendant.
Docket No. 327. 8

FEDERAL TRADE COMMISSION,
Complainant,
vs.
THE LUBRIC OIL COMPANY,
Defendant.
Docket No. 329.

FEDERAL TRADE COMMISSION,
Complainant,
vs.
THE REFINERS' OIL COMPANY,
Defendant.
Docket No. 9

FEDERAL TRADE COMMISSION,
Complainant,
vs.
THE STANDARD OIL COMPANY OF OHIO,
Defendant.
Docket No.

10 *Proceedings*

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District Court Room, Federal Building,
Columbus, Ohio, October 28, 1919,
10:00 o'clock A. M.

Before: George McCorkle, Examiner.

Met pursuant to notice.

Appearances:

Chester L. Zechiel, Washington, D. C., appearing
12 for complainant.

Thomas K. Brushart, 1501 Gallia St., Portsmouth, Ohio, on his own behalf.

Herbert M. Meyers, 246 North High St., Columbus, Ohio, on behalf of the Ohio Cities Gas Company.

Don Risinger, Eaton, Ohio, on behalf of the White Star Oil Company.

C. D. Chamberliin, Guardian Bldg., Cleveland, Ohio, and Ira C. Taber, Nicholas Bldg., Toledo, Ohio, on behalf of the Paragon Refining Company.

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Franklin Rubrecht, 22 West Gay St., Columbus, Ohio, on behalf of the Columbus Oil Company.

A. S. Hickok, president and treasurer of the Hickok Producing Company.

E. T. Lippincott, Lima, Ohio, on behalf of the Lily White Oil Company and the Carbonless Oil Company.

Ralph E. Westfall, Columbus Savings & Trust Bldg., Columbus, Ohio, on behalf of the Independent Distributing Company.

Carl B. Ford, Williamson Bldg., Cleveland, Ohio, on behalf of the Lubric Oil Company. 14

Stewart L. Tatum, Gotwald Bldg., Springfield, Ohio, on behalf of the Refiners' Oil Company of Dayton.

W. H. Holliday, East Ohio Gas Bldg., Cleveland, Ohio, on behalf of the Standard Oil Company of Ohio.

Judge C. D. Chamberlin, Guardian Bldg., Cleveland, Ohio, on behalf of the Canfield Oil Company

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Examiner McCorkle: I will call all the cases in which the respondents have been notified of 15
this hearing at this time and place: Federal Trade Commission vs. Thomas K. Brushart, Docket No. 305; who appears for Thomas K. Brushart? Federal Trade Commission vs. The Ohio Cities Gas Company, Docket No. 308; who appears for the Ohio Cities Gas Company?

Mr. Mayers: Herbert M. Mayers.

Examiner McCorkle: Federal Trade Commission vs. The White Star Oil Company, Docket No. 317?

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Mr. Risinger: Don Risinger.

Examiner McCorkle: Federal Trade Commission vs. The Paragon Refining Company, Docket No. 318?

Judge Chamberlin: Ira C. Taber and C. D. Chamberlin on behalf of the Paragon Refining Company.

Examiner McCorkle: Docket No. 319, Federal Trade Commission vs. The Hickok Producing Company?

17 Mr. Taber: They are represented by Denman, Kirkbright, Wilson and Florey, of Toledo.

Examiner McCorkle: Federal Trade Commission vs. The Columbus Oil Company, Docket No. 321?

Mr. Rubrecht: Franklin Rubrecht.

Examiner McCorkle: Federal Trade Commission vs. The Carbonless Oil Company, Docket No. 322? Federal Trade Commission vs. The Canfield Oil Company, Docket No. 323?

Judge Chamberlin: C. D. Chamberlin.

Examiner McCorkle: Federal Trade Commission vs. The Factory Oil Company, Docket No. 324?

18 Mr. Holliday: They are represented by Mr. Huber, of Akron.

Examiner McCorkle: The Independent Distributing Company?

Mr. Westfall: Ralph E. Westfall.

Examiner McCorkle: Federal Trade Commission vs. The Lily White Oil Company, No. 327?

Mr. Mikesell: O. F. Mikesell. Mr. Lippincott is the attorney for the Lily White Oil Company, and Carbonless Oil Company.

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Examiner McCorkle: Federal Trade Commission vs. The Lubric Oil Company, Docket No. 329?

Mr. Ford: Carl B. Ford.

Examiner McCorkle: Federal Trade Commission vs. The Refiners' Oil Company, Docket No. 329?

Mr. Tatum: Stewart L. Tatum.

Examiner McCorkle: Federal Trade Commission vs. The Standard Oil Company?

Mr. Holliday: W. H. Holliday, of Cleveland.

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Examiner McCorkle: Mr. Zechiel, what case do you wish to take up first?

Mr. Zechiel: Mr. Examiner, may I inquire what other companies besides the Columbus Oil Company have filed answers this morning?

Examiner McCorkle: The Canfield Oil Company and the Paragon Refining Company.

(Ralph E. Westfall filed with the Examiner the answer of the Independent Distributing Company.)

Mr. Zechiel: Does any one represent the Carbonless Oil Company and the Lily White Oil Company?

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Mr. Mikesell: I have not been subpoenaed for either company, but I am here to represent the Lily White and the Carbonless.

Mr. Zechiel: Mr. Mikesell, neither the Lily White Company nor the Carbonless Oil Company have filed an answer.

Mr. Mikesell: Both.

Mr. Zechiel: They have filed answers?

Mr. Mikesell: Yes.

Mr. Zechiel: How long since?

Mr. Mikesell: I think it was in June.

Mr. Zechiel: It is very strange. Our record does not show any answer filed. I sent a telegram to Washington just a day or two ago asking them whether you had filed answers.

Mr. Mikesell: We have, I know.

Mr. Zechiel: I don't believe these complaints were issued in June.

Mr. McCorkle: Perhaps he does not understand your inquiry.

Mr. Zechiel: I think, Mr. Mikesell, there must be some mistake about that because while I do not know exactly the date of this complaint, I think it is sometime in July.

Mr. Mikesell: Possibly it may be. I wouldn't say positive, to June. It may be it was in the forepart of July.

Mr. Zechiel: Do I understand that you merely answered that original communication signed by the secretary of the Federal Trade Commission and sent to various companies, or did you answer the formal complaint sent out?

Mr. Mikesell: The formal complaint, and acknowledged the communication.

Mr. Zechiel: I don't understand that. Our records do not show it. Do you have a copy of that answer, Mr. Mikesell?

Mr. Mikesell: No, I haven't with me.

Mr. Zechiel: Could you get a copy here very shortly?

Mr. Mikesell: I can 'phone for it and get it here possibly in a day or so.

Mr. Zechiel: If the Examiner please, I want to make a motion first of all to combine these fifteen cases, the Ohio Cities Gas Company, the Hickok Producing Company, the White Star

Oil Company, the Factory Oil Company, the Lubric Oil Company, Thomas K. Brushart, doing business under the firm and trade name of Motor Fuel and Lubricating Company, the Independent Distributing Company, the Canfield Oil Company, the Paragon Refining Company, the Columbus Oil Company, the Carbonless Oil Company, the Lily White Oil Company, Incorporated, the Refiners' Oil Company, and the Standard Oil Company of Ohio, the Springfield Oil Products Company. I am asking that these cases be joined and combined for the purpose of taking the testimony in the cases and in order to expedite matters. I should judge that 80 per cent of the evidence will go to the entire subject-matter and will be pertinent to each case. It has been suggested that perhaps we could eliminate the rest of the 20 per cent through what answers that have been filed admitting practices or by stipulation and thus avoid encumbering the record with evidence along that line, so that practically all of the evidence on the record would go to the entire question involved in each of the fifteen cases.

Whereupon, after further discussion of the matter of stipulation, at 11 o'clock A. M., a recess was taken until 2 o'clock P. M. for the purpose of enabling counsel to prepare stipulations as above noted.

After recess.

2 P. M.

Examiner McCorkle: We are ready to proceed, gentlemen. You have a motion here, Mr. Zechiel, to consolidate these cases.

Mr. Zechiel: I made a motion to that effect this morning.

Examiner McCorkle: For the purpose of taking testimony?

Mr. Zechiel: For the purpose of taking testimony only. I don't know whether there is any further opposition to that motion or not.

Mr. Taber: May we suggest that in the case of the Springfield Oil Products Company, perhaps we ought not to be included in that by virtue of the provisions of our answer as to agency contracts. Our record ought not to be encumbered by what pertains to the others.

Mr. Zechiel: That is true. I think I will modify that motion to exclude the Springfield Oil Products Company, Docket No. 328.

Examiner McCorkle: That motion is granted. You may proceed.

Mr. Zechiel: I think perhaps under pressure this morning I allowed something to be said that might be confusing in this stipulation of the Lubric Oil Company. I don't think Mr. Ford would want it to read that way, but my impression is that after having set forth the facts with respect to jurisdiction, I conceded that it might be said that the company which Mr. Ford represented was not engaged in selling or buying these products or devices, and also that in doing so the products or devices were not moved by them across from one state to another. I think I said that, although obviously having described the manner in which they buy their pumps, if that is interstate commerce, I didn't mean to exclude it by my subsequent concession. I think that portion ought to be amended and supplemented by the ex-

pression, "except as otherwise herein described." I want to say that now so that no one else in following that form would be likely to make the same mistake.

Examiner McCorkle: Are you ready to call your witness, or do you want to wait?

(The testimony was then taken applying to the case of the Springfield Oil Products Company, Docket No. 328.)

W. E. TALBOT was thereupon called as a witness, 32
and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Mr. Zechiel: I would like to have the record show, Mr. Examiner, that Mr. W. E. Talbot is appearing in answer to the subpoena of R. S. King of the Refiners' Oil Company of Dayton, Ohio.

I am also saying this generally for the benefit of all the witnesses who have been subpoenaed; if you will leave your distance traveled, actual distance traveled, showing the city from which you were subpoenaed, with the 33
Examiner at the close of your testimony or sometime before leaving, your per diem will be taken care of in that way.

Q. Mr. Talbot, where is your home? A. Dayton, Ohio.

Q. With whom are you connected? A. The Refiners' Oil Company.

Q. Where are your Headquarters? A. At Dayton.

Q. What position do you occupy with respect to that company? A. Treasurer and general manager.

Q. As treasurer are you acquainted generally with the business of the company? A. Yes, sir.

34 *W. E. Talbot, Direct*

Q. Do you have information concerning the extent, the territorial extent over which they do business? A. I have.

Q. What is their territorial extent in the business of selling refined oil and its products and gasoline? A. The State of Ohio exclusively.

Q. Do you sell throughout the state of Ohio? A. We sell south of Columbus, the southern part of the state.

Q. Generally south of the city of Columbus? A. Yes, sir.

35 Q. Throughout the southern portion of the state? A. Yes, sir, generally.

Q. Who are your competitors? A. Do you want them all?

Q. I would like to have a list of them. A. The Standard Oil Company, the Indian Refinery, the Ohio Cities Gas, the Moore Oil Refining Company, Cincinnati Oil Works, Paragon Refining Company, Merchants' Oil Works, Kentucky Independence, Springfield Oil Products Company, Xenia Oil Company, the Columbus Oil Company, and the Gerkins Oil Company. That is as far as I know. I do not know of any more.

36 Q. Are you in competition with the Valvolene Oil Company? A. The Valvolene Oil Company I understand work on a lubricating basis. We are on gasoline and light oils.

Q. Doesn't the Valvolene Oil Company sell gasoline in the State of Ohio? A. Not in our district, that I know of.

Q. Are you also engaged in the business of selling or leasing or loaning oil tanks and pumps used for filling, storing and handling gasoline? A. Yes, sir: we are.

Q. Do you both sell and loan these devices? A. We do.

Q. In your competition in that selling and leasing and loaning of tanks and pumps, do you sell or lease and loan—or rather, you say you do handle them, including selling and leasing and loaning—in competition with any pump manufacturers? A. No, we do not.

Q. Do you know whether or not there are any pump manufacturers who sell pumps in your territory, other than to you or your company? A. Yes, sir; I do.

Q. What companies? A. The Bowser, the Wayne, Gilbert & Barker, the Milwaukee Tank Works, and 38
i think there are three other visible pumps, the Raymond Pump Company of Michigan and the Pittsburgh Visible and one from Kentucky.

Q. You mean to say they all sell in the same territory generally in which you either sell, lease or loan your tanks and pumps? A. They have sold.

Q. Do they now? A. They do, yes.

Q. In leasing your pumps or loaning your pumps, do you loan them to all of your customers? A. No, we do not.

Q. Who make application? A. No, we do not.

Q. Under what circumstances do you make such a loan? A. We did not start loaning until about a 39
year ago. Everything was an outright sale with a margin.

Q. What was the occasion of your starting the loan proposition? A. To meet competition.

Q. By that, what do you mean? A. Other companies were loaning and taking our customers from us.

Q. You mean that you actually lost customers because some competitor leased or loaned an oil tank and pump to one of your customers? A. I do.

Q. Can you make an estimate of approximately the number of customers you lost because of that sort of competition? A. I would say off-hand nothing short of fifty.

Q. And in each of those cases do you know whether or not the customers had been given or leased or loaned an oil tank and pump by a competitor? A. I do.

Q. Do you know whether or not those customers paid a reasonable consideration for the lease or loan of these devices? A. I know that they did not.

Q. Your answer would be that these customers whom you say you lost in this manner, received the loan of oil tanks and pumps for a mere nominal consideration? A. I do.

Q. In connection with your business you have had occasion to travel about over the territory in which you do business, have you? A. I have.

Q. In that respect have you had occasion to visit the particular places of sale of gasoline products? A. I have.

Q. What is your general experience in that connection; do garage men and grocery men and in general the retailers of gasoline products have at the same time more than one oil tank and pump established on their place of business? A. As a rule no, but quite a few of them have. If you wish—one concern in particular has a tank of one company, and they will have a tank of another company, one on one side of the drive and one on the other.

Q. Did you ever know one of these companies to have more than two tanks of competing oil companies at the same time? A. Not to my knowledge, no.

Q. You do not know of any such case? A. I do not know of any such case.

Q. What has been your experience with respect to the sale of gasoline products? Have these customers of yours and other people with whom you are generally acquainted been engaged in the sale of more than one company's gasoline at the same time? A. Not as a rule, providing the pump belongs to another company.

Q. Yes, I am referring to that. A. Yes. If the pump is his own pump, he buys from all companies.

Q. So that where pumps are leased and loaned by all companies to retailers of gasoline, the retailers, as a general rule, handle only the gasoline of the 44
company leasing or loaning the pump? A. As a general rule they do.

Q. Now, where retailers own their own outfits, what is the general practice? A. That generally depends upon the service of the company. In some case they will buy half from one company and half from another. And in other cases they may buy exclusively from one company for say a year or six months or maybe two or three years, but they are at liberty to buy from where they choose.

Q. Do you know what is the occasion of their changing from one company to another in the purchase of their gasoline products? A. For various 45
reasons; quality of the goods or from the service or from some disagreement they may have either with the salesman or a truck driver or perhaps with one of the men of the company.

Q. From your experience in the sale and distribution of gasoline and the handling of these pumps, do you believe that the leasing and loaning of oil tanks and pumps for a nominal consideration and the tying of contracts is a good business practice? A. I do not.

The Examiner: Do any of you gentlemen desire to ask any questions?

46 *W. E. Talbot, Cross*

CROSS-EXAMINATION by Mr. Myers:

Q. How do you know that these pumps and tanks were loaned without consideration to these customers of yours? A. I have heard it from the customers and I have seen the contracts.

Q. You have seen the contracts? A. I have.

CROSS-EXAMINATION by Judge Chamberlin:

Q. You say you have come in competition with
47 the Paragon Refining Company? A. Yes, sir.

Q. At what point did you come in competition with them? A. In the City of Cincinnati.

Q. Do you have service stations in the City of Cincinnati? A. We have.

Q. Do you have leasing outfits, pumps? A. I think we have two.

Q. Has the Paragon Refining Company ever been in active competition with your customers so that they have deprived you of your market? A. On gasoline, no.

Q. Have you any pump in Cincinnati? A. We have.

48 Q. Where is it located? A. We have them located in various parts.

Q. You said you had two pumps in Cincinnati? A. Well, we have perhaps a dozen pumps in Cincinnati, including the ones we have sold.

Q. That you have sold? A. That we have sold.

Q. Those are not your pumps, are they? A. No, they are not now.

Q. Did you sell them with any agreement or understanding with the customer when the pumps were sold that they could use only your gasoline? A. Not on the sales, no.

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Q. Is that true with reference to any of the pumps that you have furnished customers that have been taken away from you; did you have any agreements with them by which they were to buy from you? A. That have been taken away from us?

Q. Yes. A. No, they wouldn't if they had gone away from us.

Q. I say that they did take from you? A. You say did we have that agreement? No, we did not.

Q. The reason they were taken away from you was the ordinary competition in business? A. For the reason that someone else would put in a pump and we would not on a loan proposition.

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Q. But you have put in pumps? A. No, we hadn't in any particular case that you are speaking about. That is why we lost the business.

Q. I understood your direct testimony to be that you had been leasing at a nominal consideration and furnishing at a nominal consideration, pumps for the sale of your own product? A. We have in some cases.

Q. Have any of those pumps been taken away by any other firm's competition? A. I don't recall, but I think one or two have been taken out and replaced by another company on the same basis that we had ours in.

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Q. The customer didn't gain anything, then, did he? You would not have any complaint against that? A. He gained a five-gallon pump instead of a one-gallon pump.

Q. If you had furnished the five-gallon would you have retained the customer? A. We would have retained the customer.

Q. And you would have furnished the five upon the same basis as you would have furnished the one? A. We would if we had felt it advisable.

52 *W. E. Talbot, Cross*

Q. Isn't it a fact that these customers you have lost have been lost to you as you stated, by reason of difference in service or other trade considerations other than the furnishing of the pump? A. Why, not altogether, no.

Q. But they have in part, have they not? A. We have lost—I think every company has lost some customers for various reasons, perhaps of salesmanship, but I do say we have lost a number of customers on this pump business and that is the reason that started it.

53 Q. That is the reason you— A. That is the reason we started it about a year ago, leasing and loaning and we have about 12 or 15 out in all.

Q. Why don't you think it is a good business practice, Mr. Talbot, to furnish the pump for the purpose of getting a customer for your gas? A. I don't think it is either good for ourselves or anyone else. It is monopolizing that particular customer.

Q. Every time you sell a customer you monopolize him as to that sale? A. You don't monopolize him as to his future business.

Q. Are your contracts or your understandings with your customers such that they would not be permitted
54 to handle anybody else's gas through a similar installation furnished by your competitors? A. Do you mean to say that he could put another pump on the same property along with ours and handle competitor's goods?

Q. Yes. A. He could, the same as he could in any other contract that was drawn.

Q. Is there anything unfair about that? A. Why, it is unfair to a pump company if you put in two pumps on a property that you will put out a hundred gallons or less.

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Q. That is, it enables the company to sell two, where otherwise they would only have sold one? A. No, they won't sell two.

CROSS-EXAMINATION by Mr. Tatum:

Q. I just wanted to ask one question. Where are the pumps of the Paragon Refining Company in Cincinnati that you came in competition with? A. When I gave the Paragon Refining Company—as I remember, Mr. Zechiel asked me our competitors. They are competitors of lubricating oils. I don't know that we have ever run against them on light oils or gasoline.

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Q. So that so far as gasoline is concerned, you meet in competition with them? A. With the Paragon Refining?

Q. Yes. A. Whether they have tanks, I don't know.

Q. Within your district you have never found one of their tanks or pumps? A. Not to my knowledge, no.

Q. Just one other question for the record. You have never come in competition with the Canfield Oil Company, have you, in Cleveland? A. No, we haven't.

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Q. So that nothing you have said applies to the Canfield Oil Company? A. Absolutely not.

CROSS-EXAMINATION by Mr. Holliday:

Q. Mr. Talbot, you testified some few customers were taken away from you by reason of competitors putting in leased or loaned outfits. Prior to that time had these customers whose patronage you enjoyed owned their own pumps? A. They had been.

58 *W. E. Talbot, Cross*

Q. And you had been enjoying their trade continuously before that, although they owned their own pumps? A. Not exclusively, no; but we had been enjoying part of it.

Q. Isn't it a fact that the retailer usually continues to buy regularly from one particular wholesaler so long as the service and the quality of goods continues to satisfy him? A. Not frequently, no.

Q. Would it have been any different in the result to you if those customers, part of whose patronage you had enjoyed, had been taken away from you by
59 their company being appointed the agent of some wholesaler instead of having an outfit leased to them? A. Will you kindly repeat that question?

(Question read.)

A. No, I don't say that it would.

Q. So that so far as practical results are concerned, the appointment of a retailer as agent of a wholesaler is exactly the same as the leasing or loaning to him of an outfit for a nominal consideration, is it not? A. That is something I don't know; I wouldn't know. I would like to know what an agent
60 is.

Q. Assuming that that competitor, instead of putting in the tank and loaning it to him for a dollar a year or for no charge, had appointed the retailer his agent, put the gasoline into the tank for him, the retailer to be paid, say one cent a gallon or a commission on the sales that he made; would not that have the same effect on your business as the lease or loan? A. Providing the wholesaler owned the equipment, I would say yes.

Q. Do you advertise your gasoline? A. We do.

Q. How long have you been advertising your gasoline? A. Ever since we have been in business.

Q. Do you have a trade name for your gasoline? A. We do.

Q. What do you call it? A. High Speed.

Q. You consider that that is a valuable asset to your business to have a trade name for your gasoline? A. We do.

Q. How is it possible for a wholesaler or a jobber to identify his gasoline by a trade name when it is handled by a retailer unless he does make that retailer his agent or leases or loans him the tank over which the wholesaler has control? A. He could do it perhaps by advertising two grades of gasoline, handling one grade one month and another grade another. 62

Q. Would that advertise your High Speed trade name? A. Partly, yes.

Q. By advertising two brands? A. Why, they would both be advertised.

Q. As a matter of fact, you do not advertise two trade names, do you, for gasoline? A. No, we do not.

Q. Where a retailer owns his own equipment, he doesn't put any High Speed sign or electric device over the pump, does he? A. In quite a few cases, yes, in a number of cases, yes. 63

Q. But in a great many cases it is a fact that the retailer won't do that? A. It is about half and half as we have found it.

Q. All right, 50 per cent, then. So that as to the 50 per cent that refused to put your sign on the pump you get no credit for selling to the consumer your High Speed gasoline, do you? A. He doesn't have any sign?

Q. No. A. For the reason that he handles in that case perhaps three or four grades of gasoline, or perhaps only two.

64 *W. E. Talbot, Cross*

Q. Now suppose that one of your customers who owns his own pump does put your sign on the pump as you say they do sometimes. You say that in such cases sometimes they buy your gasoline and sometimes somebody else's gasoline. Is it a good promotion of your trade name to have somebody else's inferior gasoline put into that apparatus that bears your trade name? A. They don't do that when they put our trade name on their pumps, so far as I know.

Q. In other words, then, am I to understand you
65 that where the retailer puts your name on his pump he agrees not to put anybody else's gasoline into yours? A. No, he hasn't agreed to, but he doesn't do it.

Q. He doesn't do it? A. And we haven't found any case, to my knowledge, where he did.

Q. But if he did, it would hurt your business, wouldn't it? Have you answered? A. I haven't, no. I really don't know.

Q. Is there any way that a retailer or a wholesaler can identify his trade name of gasoline so that he can guarantee to customers that they will get that advertised brand, except by one of three methods,
66 first, the lease or loan of an outfit; secondly, the appointment of a retailer as an agent, or thirdly, by building and operating his own service station? Is it not a fact that those are the only three methods by which a wholesaler advertising his goods can assure his customers that they will get that advertised brand? A. No, it is not.

Q. You say that there is some other way? A. There is.

Q. What is it? A. To answer that, I have seen cases where pumps are loaned and they are willing to

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use our brand straight and no one else's; other cases where a man owns his own pump or refuses to handle anyone else's goods but one particular company because he likes the particular brand of gas or that particular gasoline and he then, in most cases, will put a sign up that he is handling that gasoline.

Q. Then as a matter of fact, this leasing or loaning of devices is not the sole cause for a retailer dealing exclusively in one jobber's or wholesaler's gas, is it? A. It is as a rule, because he is bound down to buy their goods.

68

Q. But as a matter of fact aren't there a great many retailers that buy exclusively from one manufacturer or wholesaler for a continuous period of time? A. I wouldn't say for a continuous time. They perhaps will for a year and then perhaps they will switch to another company and put their sign up, like any other man in business.

Q. As a matter of fact, isn't it also your experience that retailers who are operating a loaned or leased outfit will oftentimes or some times change pumps and sell for different people as often as once in a year or two years? A. If that was the case, I see no object in leasing the pump.

69

Q. That sometimes happens, though, doesn't it? A. I have heard it to happen, yes.

Q. Isn't it a fact that the wholesalers do solicit retailers who have a leased pump and get them to put in their pump instead of the one that they already had? A. On a leased outfit I don't know. I can't answer that by saying that we have solicited that class of trade and sold them at times.

Q. And you have also had leased outfits of yours put out and your competitor's pumps put in, haven't you? A. Not to my knowledge, no.

Q. But that does sometimes happen, doesn't it? A. Having another outfit loaned by another company put in?

Q. Yes. A. I have heard that it has, but not with us.

CROSS-EXAMINATION by Mr. Rubrecht:

Q. Mr. Talbot, you said that the Columbus Oil Company was a competitor of yours; where do you meet that competition? A. We meet that in Xenia.
71 That is about the only place—Xenia annd Piqua.

Q. Xenia and Piqua; where is the Columbus Oil Company's station at Piqua? A. They don't have a branch at Piqua, but we meet their competition at Piqua. They drive over from Troy.

Q. Troy is a few miles from Piqua? A. A few miles from Piqua.

Q. You don't meet them right in Piqua, though, do you, from any station there; they have no station in Piqua? A. They have pumps in Piqua.

Q. Pumps there? A. Yes, sir.

Q. They have pumps that they have sold, if I understand it? A. That they have loaned.

72 Q. They have loaned pumps in Piqua? A. That is as I understand it.

Q. How did you get that information? A. I got that direct from one of the customers in Piqua.

Q. They told you that they got it direct from the Columbus Oil Company? A. Yes, sir.

Q. When was it that you got that? A. About three weeks ago.

Q. Well, the Columbus Oil Company has not replaced any pumps that you have installed, have they, for any of your customers? A. No, sir; they haven't.

Q. You say in Piqua the pumps were loaned to them there, or leased? A. So this party told us. I didn't see the pump. 73

Q. You don't know anything about it except by hearsay? A. I do not.

Q. You think it is bad practice for a man to have a trade name or trade-mark for his particular brand of gas and have it possibly above the pump to attract the attention of the public that that trade-mark is the place where you can get that quality of gasoline; you think that is bad practice? A. I do not.

Q. That is, I mean in connection with the loaning of pumps and tanks, you think that is bad practice, do you? A. I think that the loaning of pumps and tanks is bad practice. 74

Q. You think it is bad practice. How are you going to get the distinctive characteristic of your gas if you don't advertise it and call attention to where they can get that particular brand? A. We do advertise.

Q. You do advertise but you do not advertise around the station, do you? A. We do.

Q. You are not in favor of that? A. No, sir.

Q. You are not in favor of the loaning and leasing proposition? A. No, sir; not in favor of the loaning and leasing proposition. 75

Q. You are in favor of every jobber owning his own tank or pump or being appointed an agent? A. I am in favor of every dealer owning his own tank and pump.

Q. His own tank and pump? A. For the reason that he has liberty to buy from where he wishes.

Q. Then, of course, he couldn't keep your sign over his pump, could he, if he owned his own pump and could buy where he pleased? A. No, he could not.

76 *W. E. Talbot, Cross*

Q. Would that reduce the amount of business that you get yourself, the amount you sell, the amount of gas you could sell? A. In that case it would.

Q. Therefore you are cutting off your own nose in doing that, aren't you? A. It is a question if we would lose it if he owned his own tank and pump.

Q. If he owns his own pump and tank he can buy from the Standard or the Columbus Oil Company and ignore you, can't he? A. In that case he would not advertise any particular brand.

77 Q. In any case you would lose? A. We would lose the advertisement but not the business.

Q. Wouldn't you lose the business if there were no attraction or advertisement there to indicate the Refiner's Company's gasoline, wouldn't you lose on that proposition when there was nothing to indicate that it was there? A. We would lose the advertisement.

Q. You would lose the business, too, wouldn't you, by reason of that? A. We would still continue to sell him.

Q. How do you know you would? A. If he is buying from all companies.

78 Q. How? A. If he is buying from all companies in that particular town.

Q. Now, assume here is a pump on the curb, no sign above it indicating that it is Refiner's Oil Company of Dayton, nothing there to indicate what it is, and I come along in an automobile and I am hunting Refiner's oil. I have been used to using it, and I saw nothing on that pump to indicate what oil he has got, do you mean to tell me that I, as a driver of an automobile, would not have some doubt or would not go somewhere else to get the Refiner's oil, call for it some place else? A. I suppose you would.

Q. You would lose that, wouldn't you? A. In that one case.

Q. That is just one illustration of a great many A. Not a great many, no.

Q. What is the value of the advertising on the pump, in your opinion, and the name above in a glass globe? A. If you could get your customer to use your product, I think it is very good.

Q. It has a very good value? A. Yes, sir.

Q. You would prefer having that to being without it? A. Yes, sir; I would.

Q. Now, coming right back to the last analysis; do 80
you not agree that it is a stimulation of business to have a pump with a distinctive sign on it handling a certain kind of gasoline; isn't that a stimulation to business? A. Yes, business as well as the retailers who handle your goods. I don't think the advertisement is any more valuable than perhaps a sign on his garage.

Q. That is valuable, isn't it? A. It is.

Q. Yes. Now, isn't it a stimulation also for the Columbus Oil Company, or the Standard, or the Paragon, in the same town, your town, Dayton, to have a station over which there is a sign, "Paragon Oil," "Standard," "Red Crown," and so on; isn't that a 81
stimulation of business? A. It is.

Q. That is, in competition with your business? A. Yes, sir.

Q. Therefore, there is no restraint of trade if the companies are doing as you have been doing, putting the name over the pump; it is a distinctive brand of gasoline, isn't it? Is there any restraint of trade in that? A. Who owns the pump?

Q. It don't make any difference who owns the pump; I am talking about the advertisement now. A. Why, no, I think it is good.

82 *W. E. Talbot, Cross*

Q. You said a while ago you thought it was bad? A. No, I beg your pardon.

Q. Assuming now, for instance, that the dealer owns the pump, the retailer, the man who is selling it to the automobile driver who comes up with his machine. Suppose he owns the pump outright; he has the absolute title and is in possession of it, but he won't advertise your oil or anyone else's oil. Do you think he will sell as many gallons per day or week without that distinctive advertisement over the pump as he would if he had it above there? A. I know he
83 would in Dayton.

Q. You say the gallons or the gallonage would be just as much per day for the Refiner's Oil Company of Dayton if he did not have the sign up there; is that right? A. It would, because they are not allowed to have signs on pumps.

Q. Who doesn't allow you to have signs on pumps? A. The reason I was asking about that was because you were asking about Dayton. The City of Dayton does not.

Q. Who prohibits signs on gasoline pumps there? A. The commission.

Q. How? A. The commission.

84 Q. What commission? A. The City Commissioners.

Q. What commission; the trade commission? A. A. The City Commissioners.

Q. You have got a commission form of government over there, haven't you? A. Yes, sir.

Q. You have a czar of Dayton and he won't allow you to have a sign over your pump; is that right? A. That is right.

Q. How long has that been in vogue? A. About three years.

85

Q. Well then you are just answering all these questions as to the value of the advertising over the pumps from a purely local standpoint, from the standpoint of Dayton and you have a peculiar form of government in Dayton? A. No, because we do not operate in Dayton only.

Q. You operate in Cincinnati and other cities, don't you? Now eliminate Dayton from your mind. Take that out of it and let us do not consider the commission form of government. Go over to Xenia, or Troy, or wherever you have a station. Do you mean to say there is no value in having the name over the pump, 86 what quality of gasoline it is that company sold? A. No, I do not.

Q. How much value is it? A. I don't know.

Q. Don't you agree that that is the best method of calling the attention of the patron as to where and what kind of gasoline he can get at a given station; isn't it the best method? A. I don't know.

Q. Now I will ask you another question. Isn't it a fact that the average automobile driver does not think about gasoline until it is getting low in the tank and therefore he searches for the kind that he wants and gets it at the nearest place, if he knows where it is; if he knows where the station is of the Refiners' 87 Oil Company he will think about getting that gasoline when he is where he knows it is and he will get it by the name on the pump. A. As a rule they don't pay much attention.

Q. Do you have a sign over your place of business? A. We do.

Q. What kind of a sign? A. We have various signs.

Q. I know, I suppose you have various signs, but do you have electric signs to be read at night? A. We have both.

88 *W. E. Talbot, Cross*

Q. What is the value of that sign to you; does it get you any business at all? A. We think it does.

Q. You think it does; wouldn't the same apply to a pump where there was a sign over it? A. I think that a pump with a sign over it with the words "Filtered gasoline" would mean to the average tourist just as much as any particular brand.

Q. Take your local community, however, where they know about the Refiners' Oil Company having a certain brand or quality of gasoline; do you say it is of no value to have that sign over the pump so that
89 even the residents can know where it is and where it can be found? A. I think it is of value.

Q. You think it is of value; that is what I thought. Now I will ask you, Mr. Talbot, does not that all make for a better volume of trade for your company as an illustration in the sale of gasoline—that method?

Mr. Zechiel: I do not believe "that method" is very clear.

Q. Do you get my question? A. I would like to hear it again.

(Question read.)

90 Q. Isn't it a fact, Mr. Talbot, that the advertisement of a certain quality or brand of gasoline educates not only the public to use that in their automobiles—for instance it has less carbon and more firing power, and doesn't the driver come up and take his chance on getting a medium grade or a high grade of gasoline? Doesn't this advertising stimulate not only the industry of furnishing better gasoline to the public but also the volume of sales and gallonage to the public? A. Yes, I think it does.

Q. Yes, that is what I thought you would say (no reply).

CROSS-EXAMINATION by Mr. Tatum:

Q. Your company has never leased, loaned, sold or worked any oil or gasoline pumps, tanks or containers of oil or gasoline to any persons or corporations except those within the limits of the state of Ohio? A. They have not.

Q. Nor have they sold or delivered any oil or gasoline or other products excepting persons or corporations within the State of Ohio? A. They have not.

Q. The company has never moved any of these products or devices in interstate commerce between any 92
two states or any state and territory? A. They have not.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Do you recall now the names of the companies, these fifty, where your customers have been taken by competing companies under the conditions to which you have testified on direct-examination? A. I don't recall all of them, no.

Q. Do you remember any of the names of any of the companies that took your customers under the circumstances? A. Yes, I do. 93

Q. Enumerate those? A. I don't know just exactly how many I can give you.

Q. Well, whatever you happen to remember. A. The Smiley Transfer Company was one.

Q. That was the name of the customer you lost? A. Yes, sir, that is one of them.

Q. To whom did you lose them? A. I lost that to the Standard Oil.

Q. What others, if you recall any of them? A. I have lost in some other cities that I haven't in mind right now, that I could name.

94 *W. E. Talbot, Re-direct*

Q. Do you know to what companies you lost customers even if you do not recall the details? A. Yes.

Q. Of the transaction; what are those companies to whom you lost customers because of the use of these time contracts and nominal rental for leased pumps, etc.? A. May I ask one question? Is that taking in also these hundred-gallon cabinet tanks, gasoline tanks?

Q. I don't know what a hundred-gallon cabinet tank is.

95 Mr. Holliday: That has nothing to do with this proposition at all.

Mr. Zechiel: What is that tank?

Mr. Holliday: It is above ground.

The Witness: It is generally used in the rural districts.

Mr. Tatum: It is a retailing proposition of a gallon at a time, as a rule.

Mr. Zechiel: Where you delivered it in the hogsett form and it is distributed among the farmers? No, we are not referring to that. No, we are referring to oil tanks and pumps as you generally know them, curbstone pumps

96 The Witness: You want the names of different companies?

Q. Yes, if you recall to whom you lost customers because of this practice as you have described it previously. A. As I remember, there was the Standard and the Kentucky Independent. I really don't remember.

Q. If you don't recollect that is all right. With respect to the agency agreements, is it your opinion that the agency agreement as a competitive method is equally as objectionable as the loan agreement? A. I really don't know; I haven't had enough to do with them.

Q. And how large is your company, the capital invested, the capital stock? A. $400,000.

Q. All paid in? A. No. I think there is a hundred outstanding.

Q. How many pumps and tanks do you have leased or loaned? A. Not over 15; it is 12 or 15.

Q. Do you make it a practice to lease and loan pumps and tanks to customers of yours who are in the habit of buying gasoline from you for a time and then from somebody else and then somebody else and each time installing a different pump of some other company? A. No, we do not. 98

Q. How many people, customers and prospective customers or customers of competing companies, in the territory in which you do business, own their own pumps and how many of them lease pumps in a general way? A. I would say about 50 per cent.

Q. Do you know whether competing companies in your territory are likely to or do as a matter of fact lease and loan oil pumps and tanks to customers who buy for a time from one company and then from another company? What is the trade practice in that respect within the range of your experience? A. The competitors do, yes. 99

Mr. Zechiel: Read that question to see if he understands it.

(Question read.)

A. Yes, they do.

Q. In answer to the attorney for respondent's question as to the advantage of advertising your product by signs on the pumps and tanks, you said that you thought it was some advantage to your company, I believe; am I right? A. You are.

Q. Do you mean to say that that is because of the time contract or the nominal consideration paid for

the pump or tank on which this sign is placed? A. No, I think the sign is placed as it is at the present time on pumps and tanks that are sold outright.

Q. Then the placing of signs and advertisements on top of pumps and tanks, in your opinion, has nothing to do with the leasing or loaning of pumps for a nominal sum on time contracts? A. Absolutely nothing.

RE-CROSS EXAMINATION by Mr. Rubrecht:

Q. You haven't any pumps at Piqua? A. Not as yet; we are just opening.

Q. Then if you come in contact with any other company in Piqua it is because you drive over there from somewhere else, as well as they may drive over to Piqua? A. No, we are operating in Piqua direct.

Q. You drive over there from Troy, do you? A. No, we do not.

Q. How did you get in contact with them in Piqua? A. The Columbus drives over from Troy.

Q. You are not in Piqua; you haven't any stations there? A. We have.

Q. You have? A. Yes, sir.

Q. In Piqua? A. Yes, sir.

Q. How many? A. We have just one branch: we haven't any stations.

Q. One branch? A. Yes, sir.

Q. That is a leasing and loaning proposition? A. No, the property is ours and the tanks are ours. We have trucks.

Q. That is a distributing station? A. It is.

Q. You don't sell from that station? A. Yes, we do.

Q. You retail from that station? A. Not direct. We sell wholesale and retail both from the truck.

Q. You drive out from there, out into the outlying sections? A. It is a distributing point.

Q. That is what it is; it is not what we ordinarily understand as a pumping station, as we ordinarily understand it here? A. No, sir.

Examiner McCorkle: What is your street number in Dayton?

The Witness: 315 South Main.

104

L. T. KAMERON was thereupon called as a witness, and having been duly sworn, testified as follows:

By Mr. Zechiel:

Q. What is your name? A. L. T. Kameron.

Q. Where do you live? A. 1909 Dorr Street, Toledo, Ohio.

Q. Mr. Kameron, you are the same Mr. Kameron who was subpoenaed as L. C. Kameron, are you? A. I am.

Q. Where is your home, Mr. Kameron? A. In Toledo, Ohio, 1853 Oakwood. 105

Q. With whom are you connected in business? A. With my father, Mr. J. J. Cameron.

Q. What is your father's business? A. Groceryman and gasoline business.

Q. With respect to his gasoline business, what is the general nature of the business he does? A. Wholesale principally; retails a little out of grocery stores.

Q. What is your position with your father's business? A. I am manager of the gasoline department.

Q. What has been your experience in the gasoline industry? A. Well, I don't know what you would want me to say there.

Q. Just in a general way; what do you know about it; how much experience have you had and what have you been doing? A. I have not had a great deal of experience. I have only been in the business, oh, in the neighborhood of two years.

Q. What is the territorial extent of your experience? A. Within Toledo, not very far outside out of Toledo and not any outside of the state.

Q. Your experience in the City of Toledo has been only within the last two years? A. Within the last two or two and a half years.

107 Q. Do you handle oil tanks and pumps in connection with your business in any way at all? A. We do not make it a practice. The only time we have ever done it was with one exception.

Q. Now, you mention you do not sell oil tanks and pumps to your customers? A. Not unless the customer is not able to get them. In such case we will go to an agent of some oil tank and pump company and let them talk with the agent.

Q. Then you do not sell oil tanks and pumps to your customers? A. With the one exception of tanks. We have sold perhaps two outright.

Q. You also have one tank installed under a lease
108 agreement, have you? A. No, it is not installed. We have a lease or agreement to install it, but as yet it is—we have not furnished any gasoline, and the equipment is not installed yet.

Q. What is your capital investment in the gasoline business? A. Well, offhand I would say about $15,000.

Q. How is that investment distributed in a general way? A. In storage tanks and stock, stocks of gasoline and oils.

Q. Have you ever lost any customers because you refused to lease or loan an oil tank or pump for a nominal consideration? A. None that I can swear to.

109

Q. Have you ever tried to sell to retailers of gasoline who would not buy from you? A. Oh, yes.

Q. Did they ever give you any reason for refusing to buy at that time? A. Yes.

Q. During that time did any customer or any retailer to whom you tried to sell gasoline give as his reason that he was under an agreement or arrangement with a competing oil company, because of which he could not buy from you? A. Yes, a few.

Q. Who are your competitors? A. Well, the Standard Oil, the Hickock Producing Company, the Paragon and the people who sell the Lubric oils.

110

Q. You mean the Lubric Oil Company? A. Who are the people who sell the Lubric oils? The Lubric Oil Company?

Q. Yes, that is right. A. That is all I can recall at present.

Q. You say you have never installed any oil tanks and pumps under these lease contracts? A. No.

Q. That is your reason for not installing those equipments? A. The amount of capital involved in it.

Q. You mean you cannot afford to conduct that kind of business? A. Yes, sir.

111

CROSS-EXAMINATION by Mr. Holliday:

Q. Mr. Kameron, you did not go into the service station business either? A. No, we are not in the service station business excepting at the grocery stores.

Q. Why don't you go into the service station business? A. Capital involved.

Q. As a matter of fact it would take more capital to sell your gas through a service station method of doing business than through the system of leasing or loaning curb outfits, wouldn't it? A. I don't know.

112 *L. T. Kameron, Cross*

Q. Well, if you had to acquire ground and put up a building and build driveways such as they have for service stations, that would take more moneys than buying a simple pump outfit, wouldn't it? A. Yes, but the quantity sold is another question which we do not know anything about, because we have not tried it that way.

Q. It is a self-evident proposition, isn't it? A. No.

Q. That it is cheaper to buy one pump and have all the sales at that one pump than it is to have to buy in addition to the pump a building and make
113 driveways, and acquire land; that is self-evident, isn't it? A. There are other questions involved in that.

Q. But isn't that a self-evident proposition? A. No, it is not to me.

Q. Doesn't a pump cost less than a pump plus the cost of driveway and yard and building? A. Yes, but you sell more at a service station, as I understand, than you will simply at a pump. That is, your capital involved might perhaps sell more product in a service station than it will if you had merely a pump.

Q. That is, assuming that your service station is established in a better location than your curb outfit? A. Yes.

114 Q. Now, assume for the moment, Mr. Kameron, that the Federal Trade Commission should issue an order against all the companies in the State of Ohio, forbidding them to lease or loan pumps for a nominal consideration, and suppose that all of the companies in the State of Ohio should comply with that order and should immediately turn around and make the customers who are now leasing from them their agents, the agents agreeing to sell their principal's gasoline in those same tanks, and be paid a commission for selling, would that present any easier condition or any essentially different condition for you in your business than the present condition? A. I don't know.

115

Q. Well, what do you think about it? A. I have no thought about it. I have not thought about it long enough to give any opinions on it, really. It would be a rather rash statement on my part to give any opinions of that kind.

Q. It would not change that condition in any essential respect, would it? The agents would still be buying all of his gasoline from the particular wholesaler who happened to be his principal, and you would not be any more able to sell gasoline to him then than you are now, would you? A. I don't know.

116

J. L. MARSH, was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. You may give your name and address? A. J. L. Marsh, 13 Pasadena Avenue, Youngstown, Ohio.

Q. What is your business, Mr. Marsh? A. Oil business.

Q. With what company are you associated? A. The Vahey Oil Company.

Q. What is your position? A. Vice president and 117
general manager.

Q. How long have you been associated with the Vahey Oil Company? A. Since August 1, 1918.

Q. What was your experience, if any, in the gasoline industry prior to that time? A. About twelve years.

Q. What were you doing; what was your business during that twelve years prior to that date? A. Well, I had done a little of everything with the oil business.

Q. Just enumerate it in a general way. A. I was in the refinery, traffic department, accounting depart-

ment, sales department, station department. That is all, I guess.

Q. Now, was all this employment with this same company? A. No, sir.

Q. With what company? A. With the Independent Refining Company and the Texas Company.

Q. How long have you been with this company? A. Since August 1st, 1918.

Q. Was this company organized at that time? A. It had been in operation a good many years prior to that time.

119 Q. What is the capital stock of your company? A. The outstanding capital?

Q. Yes, the outstanding capital, the issued stock? A. $126,000.

Q. What is the general territorial extent over which your company does business? A. Why, principaly northeastern Ohio.

Q. Would you make that a little more definite? A. Our business—

Q. About how far south? A. Our business is confined principally to the Counties of Mahoning and Trumbull and Columbiana.

Q. Who are your competitors? A. In all petro-
120 leum products or just gasoline?

Q. Gasoline products? A. Standard Oil Company, the Texas Oil, the Freedom Oil Works Company. That is about all.

Q. Do you know, in a general way, the respondent companies here in this hearing? A. I know them slightly only.

Q. None of the respondents other than the Standard Oil Company of Ohio are competitors of yours in that territory? A. So far as I know.

Q. They are not? A. They are not.

121

Q. Did I understand you to say you had formerly been employed by the Texas Oil Company? A. Yes, sir.

Q. Are you acquainted with the territorial extent over which the Texas Company operates? A. I was acquainted on August 1st, last year. I would not say that I am now.

Q. What is that territorial extent, generally? A. Do you mean in Ohio?

Q. I am talking about it generally. A. Well, they cover a good part of the United States.

122

Q. All of the United States or certain portions of it? A. I don't think that they cover all of the United States.

Q. My question was very poorly phrased. I mean do they occupy most of the territory within a section of the United States, say the Mississippi Valley section, or do they distribute everywhere? A. They cover the eastern and southern sections pretty closely, and some parts of the western, but not so much in the northwest, as I remember it, and some of the central states.

Q. What was your position with the Texas Company? A. Agent at one of their Youngstown stations.

123

Q. Did they at that time transport the gasoline from outside of the State of Ohio into the State of Ohio? A. They did.

Q. And there sell it? A. Yes, sir.

Q. What was the general distribution of their sales at that time, generally, over the State of Ohio or locally? A. As I remember it, Youngstown was the only distributing point they had in Ohio, and their distribution of gasoline was confined almost entirely to the territory immediately surrounding Youngstown.

Q. They had no other station in Ohio? A. I don't think they did.

Q. Does your company deal in gasoline pumps and tanks and containers for gasoline? A. Yes, sir.

Q. Buy and sell them? A. Yes, sir.

Q. Do you lease or loan those? A. No, sir.

Q You make no leases or loans at all to any of your customers? A No, sir.

Q. In a general way, how extensive are your sales of tanks and pumps? A. We do not—we couldn't consider it a business. We simply buy them when
125 we have someone in mind to whom we can sell them. We do not carry them in stock.

Q. About how many a year? A. Oh, I should say perhaps a dozen.

Q. In handling those pumps, you have them shipped to you, do you, from outside of the state? A. Yes, sir; we buy them outside of the state.

Q. Do you have them shipped direct to the customer to whom you sell them? A. No, we bring them into our plant.

Q. Distribute them from there? A. Yes, sir.

Q. Order them for particular customers? A. We generally have an order for one when we buy it.

126 Q. Are you acquainted in the field over which you operate generally with the practice of the distributing trade with respect to the use of oil tanks and pumps? A. I think so.

Q. You travel about over the whole territory more or less? A. Yes, sir.

Q. What is your experience in that respect? Do retailers of gasoline products have more than one oil tank and pump or gasoline pump equipment installed on their premises at the same time? A. More than one pump or tank?

Q. Yes, more than one outfit, tank and pump? A. Some have two.

Q. What is your experience, in a general way: is it the common practice to have more than one, or is it the common practice to have only one? A. It is the common practice to have about one.

Q. Do you know of any instance where they have more than two such equipments? A. I cannot recall any instance.

Q. Now, where they have two such outfits, do such retailers of gasoline buy and sell gasoline of more than one oil company at the same time? A. I do not know of any such case where they sell more than one company's gasoline. 128

Q. That is where they have two installed? You say you do not lease or loan? A. No, sir.

Q. Why don't you lease and loan oil tanks and pumps to your trade? A. Well, it has never been the policy of our company to do that and we have found it more satisfactory in our particular case to sell than to loan.

Q. Have you ever lost customers because you refused to lease or loan a pump? A. Yes, I think I have.

Q. You say you think you have; you don't recall who they are but you are positive you have lost customers? A. I am not positive who they were but I 129 am positive I have lost customers.

Q. Have you ever tried to sell your product to vendors of gasoline who refused to buy of you because they were under time contracts and lease agreements with competitors of yours? A. That is, I understand you to ask if I have been refused by some one, some dealer?

Q. Yes. A. To buy of me because he had some other company's outfit?

Q. Yes, because he had another company's outfit? A. Well, I have been refused on that account.

130 *J. L. Marsh, Cross*

Q. Do you believe the leasing and loaning of oil tanks and pumps is sound business practice? A. I do not feel qualified to make a statement on that because my business is confined entirely to Youngstown.

Q. Well, in the City of Youngstown you say you do not practice it? A. No.

Q. What is the reason why your company does not engage in the leasing and loaning of oil pumps? A. Because we have always found it possible to sell all of those we could serve. Our business has been such
131 that we had about all that we wanted to do and there has never been a case where it has been necessary to get out and hustle for business like in some localities, perhaps.

CROSS-EXAMINATION by Mr. Holliday:

Q. Mr. Marsh, the Texas Oil Company has a bulk storage station at Youngstown? A. Yes, sir.

Q. And the gasoline which it sells at retail is brought into Youngstown in tank cars, is it not? A. Yes, sir.

Q. And emptied out into that storage tank? A.
132 Yes, sir.

Q. And from that storage tank the gasoline is later taken and placed in the containers from which it is ultimately sold at retail? A. Yes, sir.

Q. Most of your company's business is retail sales, is it not, Mr. Marsh? A. Yes, a good deal of it is.

Q. And you operate some filling stations or service stations? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. You do a wholesale business, however? A. Yes, sir.

Q. Do you know whether the Texas Oil Company is engaged in leasing or loaning oil tanks and pumps? A. Yes, they are.

Q. Are you yourself intimately acquainted with the method in which they place these pumps to their various customers? A. I am not now.

Q. Were you during the last year? A. I was up until August 1st, 1918. 134

Q. At that time, if you know, how did the Texas Company have their oil tanks and pumps shipped into the state, in carload lots or individual lots? A. Individual lots.

Q. Were they shipped in for some particular customer? A. Not generally; we had them stocked there.

Q. But sometimes for a particular customer? A. Yes, sir.

Q. Where you placed them in stock you left them in the container or wrapper in which they were shipped, or not? A. Sometimes we did.

Q. And then you frequently—did or did you not frequently install these pumps by taking those that 135 were shipped in in individual lots with the crating on out and put them into the place of business where a customer wanted them? A. No, all of the tanks were installed by us and we uncrated them at our plant and inspected them to see that they were in proper condition.

Q. You uncrated them for the purpose of inspection? A. Yes, sir; and then took them and installed them ourselves.

Q. You did that with the pumps, too? A. Yes, sir.

136 *H. J. Seimer, Direct*

H. J. SEIMER was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name and address? A. H. J. Seimer, 701 Reading Road, Cincinnati.

Q. Where do you live? A. At Cincinnati, 3522 Evanston Avenue.

Q. With whom are you connected, Mr. Seimer? A. I have my own business, calling it the Merchants' Oil Company. It is not incorporated.

137 Q. You own the business yourself? A. Yes, sir; it is not incorporated.

Q. How long have you been engaged in the oil business? A. Thirty-five years; it will be thirty-five years soon.

Q. During that time you have been buying and selling gasoline? A. I have been for nine years.

Q. Prior to that time— A. (Interrupting.) I was for myself three years when I started and then I worked for the Standard Oil Company, the Whitestone Lubricating Company and the Cincinnati Oil Works.

Q. That is the Standard of Ohio? A. It was then
138 the Consolidated Tank Line Company.

Q. What is the amount of investment you have in the oil industry? A. I have an investment of about $35,000; that is, $20,000 working capital and $15,000 the other.

Q. $20,000 working capital? A. Yes, sir; it is about $35,000; $15,000 in tanks, etc.

Q. What is the territorial extent over which you do business? A. I only do business over about half of Cincinnati, what you would call, if you are acquainted there, Avondale and Walnut Hills, Hyde Park, and that territory.

Q. Who are your competitors there, Mr. Seimer? A. The Moore Oil Company, the Evans Oil Works, the Cincinnati Oil Works, the Refiners' Oil Company, the Kentucky Independent, the Paragon Refining Company, the Standard Oil Company—I think that is all.

Q. Are you acquainted with the business of the Kentucky Independent Oil Company? A. I am some by knowing him—knowing Mr. Brannon.

Q. Do they do business in any other state than the State of Ohio? A. Kentucky.

Q. Are you also engaged in handling pumps and 140
tanks in connection with your oil business? A. No, sir. If a man wants a pump, I call up a pump company and let him go and sell the pump. I don't want to get into it.

Q. You don't buy or sell any gasoline pumps? A. It may be that a customer wants one, that one of my customers wants a tank and I will have the pump man to sell it and then he will pay me; the owner will then pay me.

Q. You are acting then as the agent of the pump company? A. Well, I am taking it because some of those customers have been old customers of mine and they want me to attend to anything that they have got 141
to attend to such as buying pumps.

Q. So that you really act as agent between the pump company and the company? A. Yes, sir.

Q. Have you ever lost any customers in your territory because you refused to install an oil tank and pump or lease it to such customer? A. I think I have but I cannot prove it. I have never seen any agreement. The customers have told me that, but that would be all I would know of it.

Q. Do you mean— A. (Interrupting.) People would say, "Well, I can't buy of you; I want to

142 *H. J. Seimer, Direct*

buy of you." Then they would say, "I can't because the other company has gone and leased me a tank." In other words, they would say to me in this way, "The other company has fixed me up with a tank." While I would say that they did that, I only have it from hearsay.

Q. But they did say to you at the time you solicited their business that they could not buy of you because the other company had fixed them, or something like that? A. Yes, sir; but I never seen the proof.

Q. How many such instances do you recall? A.
143 Well, it has happened to me lots of times, a good many times.

Q. You say you have lost numerous customers? A. It has hurt me and it hasn't. They would buy of those people a couple of years and I would wait my time out and get them back anyway and they would have their pump paid for; that is a fact. You all know it. You are in the oil business.

Q. But at the time you did go to those customers you could not get them? A. Yes, sir; and they were better trade afterwards because just as soon as they got that pump they generally, if they were getting poor gasoline—

144 Q. They probably were. A. I don't say they were. I don't say that. They thought they were.

Q. Did you ever try to sell to any of these retailers of gasoline who refused to buy, giving as their reason that they were under contract arrangement? A. Yes, sir. I had a customer last week, the Hart Tire Company. That is one I recall of Cincinnati. They wanted to buy of me, the man running the place wanted to buy of me—not that I am sore about it, but just telling you how it happened—the man running the place wanted to buy of me. I had it all arranged: I filled him up, and the boss came back,

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the moneyed man of the place, and he said, "Hold on; the refiners has got a lease on that tank," so I lost that. That was last week.

Q. Has that sort of thing happened in a number of cases? A. That has happened to me for nine years; it never stops.

Q. You say you do not lease or loan tanks and pumps; what is your reason for not engaging in that kind of business? A. It don't pay me.

Q. You mean that you do not have sufficient capital to invest in that kind of business? A. Well, for the little territory that I cover it doesn't pay. In my 146
opinion I don't think it pays any of them.

Q. Do you think it is a good business practice, or not? A. I don't think it is. They spoil the trade.

CROSS-EXAMINATION by Mr. Myers:

Q. You say that this matter of loaning pumps by other companies has been beneficial to you? A. No, no; I didn't say that.

Q. You said it a while ago? A. It paid me to wait it out.

Q. It paid you to wait it out? A. I didn't say it was beneficial. 147

Q. After the pumps were loaned, do you mean to say that you finally got the business? A. In many cases—those that want to buy of me.

Q. Were any of those pumps sold by any of these competing companies outright or just loaned? A. I never came in contact much with the Kentucky company. I come in contact more with the others.

Q. You misunderstood my question. A. As I stated, I only had hearsay. I couldn't prove anything. That is what I meant in my first statement.

148 *H. J. Scimer, Cross*

Q. Now, the fact that these pumps were leased—did the customers finally get control of the pumps where they could buy of you, or were the pumps taken out and some other pumps put in? A. Well, the pump would come out. Then maybe they—I could name you cases such as East Walnut Hills—are you acquainted in Cincinnati—the East Walnut Hills garage. I got them.

Q. After the pump gave out? A. I don't know whether it was that or not. The agent brought it in.

149 Q. Were they using the same pump that they had used when they refused to buy of you? A. They were using the same pump.

Q. Then as a matter of fact they must have bought the pump? A. I suppose.

Q. Now, what difference would it have made in your business if these people on Walnut Hills had been agents of the other company and had been given a commission for selling gasoline rather than having loaned or leased him a pump and then having been compelled to use that gasoline? A. Wouldn't that bind that customer to buy of me if I loaned him a pump?

Q. Wouldn't it bind what? A. Wouldn't it bind

150 him if he was my agent, to keep buying of me?

Q. Yes. A. I wouldn't sell that way.

Q. It would be the same practical effect; it would be the same result. A. He would be forced to buy of me.

Q. Yes. A. I say I have no trade like that.

Q. The result would be the same whether he was your agent or whether you had loaned or leased him a pump? A. Oh, yes, that would be the same; that would be the same if I loaned him the pump or he was my agent. That would be the same thing. If he was willing to be my agent or I loaned him the pump, that would be the same thing.

Q. The fact of the matter is you would have more control of him if he was your agent than if you had simply leased or loaned him a pump? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Rubrecht:

Q. You would also have more liability if you had employed a particular distributor as your agent, wouldn't you? A. Well, I don't know.

Q. That would be a fact if you employed John Jones to distribute gasoline as your agent, to distribute your gasoline, you would have more liability than if he were distributing for himself and you had no connection with his business other than selling it? A. Yes.

Q. As a matter of fact do these competitors of yours establish agency agreements or tank loan agreements? A. I don't know, because when a man tells me that they have fixed him up, I never ask him any questions and I don't go into any further detail.

Q. What is your best impression from those conversations you had with these particular customers? A. A man may tell me that, "I bought a pump for $15." Now, sometimes that is true and sometimes not true that the other company sells them a pump for $15, and I wouldn't bother about it because maybe the man isn't telling me the truth.

Q. You don't know then whether in your territory your competitors establish agency agreements or loan and lease? A. No, I don't. I don't know any more than what the customers tell me they do.

CROSS-EXAMINATION by Mr. Taber:

Q. You have been up there for nine years, running your own business? A. Yes, sir.

Q. Getting along pretty well? A. Fairly.

Q. As far as you are concerned, it don't make any difference to you whether a fellow has loaned a tank or a leased tank; you go on with your business? A. If a man wants to give those fellows a brick house, it is up to him.

Mr. Westfall: How do you mean, brick by brick, or the whole thing?

The Witness: Oh, the whole thing.

Q. So far as the leased tank goes, it has not inter-
155 fered with your business? A. No, because I started —to make it plain to you, I started with three wagons and I have three trucks added to it, and I have always had enough business for all of them. I am not trying to do all the business in Cincinnati.

By Mr. Zechiel:

Q. You don't mean to say, however, that the lease and loan agreements and the use of that system by your competitors has not injured your business? A. Oh, in that way it has hurt the gallonage. I would have sold more gallons hadn't they loaned the cans, I suppose.

156 By Mr. Taber:

Q. You don't know that to be a fact, do you? A. I say I suppose.

Q. You say you are supposing? A. That is as near as I can come to it.

Q. In other words you have sold about all the product that you could get hold of and handle with your tankage? A. It is about this way, that my being in the business a long while and being a small company, I didn't want to try to get all the business in Cincinnati. I am willing to share it.

Q. What I mean to say is you have handled, you have been able to dispose of all the gasoline that you could conveniently handle through your equipment? A. As far as my force goes that I have now.

Q. But you might have very well gone on and increased that force and there would have been money in it? A. Yes, sir.

By Judge Chamberlin:

Q. Wouldn't that have taken additional capital? A. Yes, sir.

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CROSS-EXAMINATION by Mr. Rubrecht:

Q. Considerable more of capital would be required to establish agents throughout your section, would it not, than the way you are going now? A. What do you mean by agent, please?

Q. Say you bind Bill Smith down in Walnut Hills as your agent and allow him, say a cent a gallon, or a half a cent a gallon to handle your gasoline, the kind that you furnish him exclusively. Now, you would have to have additional liability insurance, would you not; you would have to have a bond from that agent to account for money and to check him up, and you 159 would have auditing to do and so on; that would cost considerably more money, wouldn't it? A. Yes.

Q. Therefore, you would go to a greater expense in establishing agencies than you do now of delivering as you please? A. There would be more money if I had an agent for a half cent.

Q. And there would be more expense, wouldn't there? A. Oh, yes.

Q. You would have longer control over your agents than any of these companies have, by reason of the leasing and loaning of pumps, would you not? A. How is that question?

Q. You could control the agent a good deal longer and a good deal more definitely than they do by the leasing and loaning of pumps? A. Yes.

Q. The agent would be absolutely your servant and you could control him absolutely? A. Yes, sir.

CROSS-EXAMINATION by Mr. Taber:

Q. Mr. Seimer, the more you expand the business the greater stocks you have to have and the greater amount of tankage you must have to handle it, must
161 you not? A. Yes, sir.

Q. And that all requires additional invested capital, don't it? A. Yes, sir.

Q. So that if you are selling a thousand gallons a day more this year than you did last year, you have got to have a relative amount of increased capital to carry on that business; isn't that true? A. Yes, sir; you would have to take some one in with you with some capital.

Q .And the business you have been doing is in comparison with the amount of capital that you have had invested? A. Yes, sir.

162 *RE-DIRECT EXAMINATION by Mr. Zechiel:*

Q. When you said that the length of control of the agent under such circumstances would be greater than the length of control under these lease agreements, of course, you were meaning if an agent were willing to tie up long enough? A. No, I meant as I answered his question, that if I have an agent, which I have five agents under my control, it is better than the man—I answered his question in that respect —is better than the man that they had leased a tank to.

Q. By that you mean an employee? A. Yes, sir; that is what I mean by an agent.

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RE-CROSS EXAMINATION by Mr. Taber:

Q. Mr. Seimer, with the greater number of tank or hand pumps that are distributed over the city, don't that furnish you a more convenient means of distributing the gasoline to the consumers than if there was less of them scattered around? A. That stands to reason, yes. The more tanks you have the better.

Q. So that by reason of the increased number of the curb tanks and pumps that are put in, which are under lease or which are owned by the owners or which are operated as agencies, the public is better served than they would be if there was less of them? A. Yes, though I do not even own a pump at the place. I don't have them at all.

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RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Would you go as far as to say that if there were a curb pump every ten feet each one would be a little more convenient to the public? A. Well, how I answered his question was that a man going with an automobile, it is often, as I notice at my place, that they run out of gasoline about a half a mile from me. As I figured it, in answer to his question, if there was another station in between that it would be more convenient for the public.

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Q. But there is a limit to that sort of increase in practice? A. There should be.

By Mr. Taber:

Q. Do you think that limit has been reached at the present time? A. Almost.

RE-CROSS EXAMINATION by Mr. Rubrecht:

Q. Mr. Seimer, are you in favor of driving all of the business of the furnishing of gasoline—are you in favor now or not of driving all of the gasoline business into these ornamental and expensively built filling stations, or do you prefer the present system to the exclusive filling station idea? A. If you will let me answer that—I do not want to take too long—

Q. Go ahead. A. I have a filling station at Cincinnati, an old frame shack. I have no pump in
167 front and I think it is as good a filling station as there is in Cincinnati, almost. Now, if those others want to put up their fancy places, that is up to them.

Q. You know that that involves quite a large additional expense? A. That is their fault.

Q. Which do you think is preferable? By an order, the effect of which would be to drive all of the gasoline supply business into a filling station system, or the present system of having pumps here and there to furnish the public demand, which would you prefer now to be continued in practice? A. Well, that doesn't make any difference. It gives the man a chance to sell some gasoline; it helps a man with a
168 pump. The man that has the pump in front of his place—he may need it to sell tires; he may need it to sell accessories to automobiles.

Q. It is a magnet which serves to draw the business to him? A. It is necessary to him. He would not sell gasoline for one cent if it wasn't necessary to have the public come to his place. Now, as a matter of fact if it was all put into stations and not sold to the curb pump, it would hurt that fellow that is selling accessories to automobiles in that the automobiles would not stop there.

Q. And be less convenient for the driver of the automobile, would it not? A. Yes, sir.

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Q. That would hurt you, wouldn't it; that move would hurt you—driving it into filling stations, wouldn't it? A. No.

Q. Unless you built filling stations? A. Yes.

Q. It would hurt your business then? A. It wouldn't hurt the garage. I sell the garages.

By Mr. Westfall:

Q. Which plan do you say would best serve and would be to the greater convenience of the general public? A. Well, for the public, it would be as the gentleman asked me. The more filling stations and 170
the more places to get gasoline is the best service for the public.

By Mr. Zechiel:

Q. Well, of course, with the limitation that you don't think you ought to have one every ten feet? A. Oh, yes.

Mr. Taber: The limit hasn't been reached.

Judge Chamberlin: Well, the public don't care, anyhow.

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JAMES S. TOBITT was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name and address? A. James S. Tobitt, Cincinnati, 48 Paddock Road, home address.

Q. What is your business, Mr. Tobitt? A. The oil business.

172 *James S. Tobitt, Direct*

Q. How long have you been connected with the oil business? A. Forty-four years, very nearly as long as Mr. Rockefeller.

Q. During that time what has been your experience in that business? A. What has been my general experience?

Q. Yes, in a general way?

Mr. Taber: What is your company?

The Witness: The Bond Oil Company.

Q. What has been your general experience during
173 your oil career? A. I have been a salesman principally, and president of this company, and I devoted quite a few years lately to the oiling of roads and of streets in the towns; not so much in the refined oil business or gasoline business, with the exception of the last six months, I opened up a little place down at Bond Hill.

Q. Prior to your connection with the Bond Hill Company, of which you are president— A. Yes, sir.

Q. Prior to your connection with the Bond Hill Oil Company, you had not been engaged mainly in the sale and distribution of gasoline to various gar-
174 ages? A. Not very much. I was with the Standard Oil Company twenty-seven years.

Q. Was your connection with the Standard Oil Company just immediately prior to your connection with the Bond Oil Company? A. Yes, sir.

Q. What was your experience with the Standard Oil? A. Oh, I was a salesman, and looked after some of the stations for them.

Q. That was— A. I did special work of different kinds.

Q. You mean salesman of gasoline, or generally? A. Lubricating oils as well as gasoline, yes, sir.

Q. How large is your company? A. Small concern; $25,000 capital.

Q. How long has this company been in existence? A. We have only been selling gasoline about seven months. I have been in the road oiling business myself personally for eight years.

Q. This Bond Hill Oil Company sells gasoline exclusively, does it? A. No, sir.

Q. Or does it deal in other products? A. We deal in other products.

Q. In connection with your gasoline business, do you buy and sell oil tanks and pumps? A. Through 176
a pump company in Cincinnati. I think I bought two direct.

Q. That you own now? A. No, we bought them and sold them to customers and those customers are paying us for them.

Q. Your customers are in the City of Cincinnati, are they? A. Yes, sir.

Q. Do you do business outside of the City of Cincinnati? A. No, sir, only the road oil business.

Q. Do you lease or loan oil tanks and pumps? A. No, sir.

Q. In your short experience, have you ever lost any customers because of your refusal to lease or loan 177
them oil tanks and pumps? A. No, sir, we are too new at the game.

Q. Have you ever tried to sell to any retailers of gasoline your product, who refused to buy from you because they claimed to be under obligations to buy from other competitors? A. Yes, sir.

Q. How many instances of that sort that you have met in your short career? A. Well, quite a few, but I couldn't tell you how many.

Q. Do you know what sort of arrangements they were under with your competitors? A. We saw con-

178 *James S. Tobitt, Cross*

tracts from one or two competitors which customers had and who told us that they were under obligations to buy their gasoline from other people, some from the Ohio Cities Gas people, and then the Moore Refining Company and some from the Standard Oil and some—I don't know—the Cincinnati Oil Works more especially. I have seen one or two contracts that they have had with them. We couldn't very well get their business when they had their pumps in there.

Q. Do you know whether or not the contracts were
179 with respect to the use of certain gasoline? A. I don't remember.

Q. But it is a fact, is it not a fact, that they refused to buy because they were under obligations with respect to the pumps and through which this was distributed? A. Yes, sir.

CROSS-EXAMINATION by Mr. Rubrecht:

Q. Do you know whether or not those contracts constituted the dealer as agent of the wholesalers or not in that case? A. I couldn't tell you, sir.

Q. Couldn't tell? A. I have had men soliciting the
180 business more than myself.

Q. You don't know that the reason they refused to deal with you was because they had leased or had loaned a tank or a pump, do you? You don't know that to be a fact, do you? A. Yes, I do know that to be a fact.

Q. Do you know whether or not they had been appointed agent— A. No, sir.

Q. Of the first party or not? A. I couldn't tell you. I know that the contract—I can't testify or tell you exactly how it read but it was that they were

to sell their own gasoline as long as they had their pump. It might run for a year—

Q. They might also have been appointed an agent?

Mr. Zechiel: Let the witness answer.

Mr. Rubrecht: I beg your pardon; I thought he had answered.

The Witness: They had a contract for a year or two years, generally a year.

Q. Yes. A. "We can't do anything until this year is up; we have a contract to buy our gasoline from those people until that time is up. Then you might 182
come around and we will talk to you." Others had their contracts about up.

Q. You couldn't say from your observation that they were not appointed agents of the first party? A. No, sir.

Q. They might have been so? A. Yes, sir.

Q. And the same answer would apply to them? A. Yes, sir.

Q. You don't say whether they were simply under a contract to use those pumps and buy that particular grade of gasoline— A. (Interrupting) No.

Q. All right; did you name the companies that you found out were engaged in that? A. The Moore 183
Oil Company was one, and the Evans Oil Company was another, and the Standard Oil Company was another. I just merely saw their contracts that they had with the parties we were selling the goods.

184 *Charles Frech, Direct*

CHARLES FRECH was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name and address? A. Charles Frech, Eaton, Ohio, 901 Baron Street, North Baron.

Q. Mr. Frech, where are you employed, if you are employed? A. White Star Oil Company.

Q. What is your relation to the White Star Oil Company? A. Manager.

185 Q. Is this the White Star Oil Company who is respondent in this proceeding, is one of the respondents? A. Yes, sir.

Q. What is the general business in which you are engaged, your company? A. Distributing gasoline.

Q. In connection with the distribution of your gasoline, do you also deal in pumps and tanks? A. We do.

Q. What is the general territorial area over which you distribute your gasoline? A. Over a territory about seventy miles long, possibly ten miles wide in western Ohio.

Q. Who are your competitors? A. The Standard
186 Oil Company, Indian Refining Company, the Refiners' Oil Company, Gerkins Oil Company.

Q. Those are all that compete in your field, are they? A. Yes.

Q. How long have you been connected with your company? A. Seven years.

Q. Did you have any experience in the oil industry prior to that time? A. I did not.

Q. In your experience in the sale and distribution of gasoline what is the fact; do distributors of gasoline commonly have more than one oil tank and pump installed at one particular point of distribution, say

a garage or grocery store? A. Not in the territory that we cover.

Q. Do you know of any cases in the territory which you cover where there is more than one pump installed? A. Yes.

Q. How many? A. Two, I believe.

Q. Only two cases? A. Two or three.

Q. In those two or three cases do the lessees of the pump, the owners of the places of business, deal in the gasoline or products of more than one company? A. No.

Q. Do you know whether or not the dealers who 188
have these two pumps installed on one premises own both pumps, or either of them? A. In two cases they do.

Q. Own their pumps? A. Yes.

Q. And in the other case? A. We own them.

Q. You own both of them? A. Yes, sir.

Q. Do you believe that the practice of loaning and leasing oil tanks and pumps on tying contracts for a nominal consideration is good business practice? A. Yes, sir.

Q. What is your reason for so believing? A. I think it is a sound business practice for us.

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Mr. Rubrecht: You think it is what?

The Witness: I think it is a good business practice for us.

Q. Why? A. It gives us a better opportunity to market our goods.

Q. Do you mind explaining that a little more fully? You say it would give you a better opportunity for marketing your goods. Just what do you mean by that? A. Well, there is a good deal of business that we have now that we would not have if we did not furnish the pump.

190 Q. For what reason? A. For one reason, if we did not furnish it, possibly some other oil company would, or if we did not furnish it, the garage man would not install it himself.

Q. Have you ever refused to install a pump? A. Yes.

Q. Or tank, for a nominal consideration under leasing contracts? A. We have.

Q. How many cases of that sort in your experience? A. Well, I would not know exactly.

Q. Oh, some rough estimate? A. Possibly a half
191 a dozen.

Q. What was your reason for refusing to install in those cases? A. We did not think that the party would sell enough gasoline to justify us in installing the pump.

Q. Now, you say that one of the reasons why you think it is good business for you to install these pumps is that if you did not do it, some other company would. Then if no company installed pumps under tying contracts of the sort of contracts which you have with your customers or some of your customers, it would not be necessary for you to install pumps in such cases, would it? A. No, it would
192 not.

Q. Don't you think it would be to your economical interest not to install pumps in such cases? A. No, I do not believe so.

Q. You do not think it would be to your economical interest? A. No.

Q. Then there is some other reason besides that of merely meeting competition? A. Yes.

Q. In all cases? A. Well, what I mean by that is that if we do not install the pumps or if the garage man did not have pumps, the gasoline would be sold from the filling stations.

193

Q. But I am omitting those places where the garage people do not have pumps. I understand from your testimony that there are some cases where the garage man would buy the pump if you did not loan it to him? A. Yes.

Q. There are some cases of that sort, are there? A. Yes, sir.

Q. Now, I am directing your attention to those cases alone where the garage man would buy the pump if you or somebody else did not loan him one. In those cases it would be to your economic interest or not do you think to loan a pump to such an individual if no one else were likely to loan one or put it, if no one else did or would loan him a pump? A. Well, I do not know about that. I think if no other oil company loaned pumps and we did loan it we would get more business if we did loan them.

194

Q. Then in that case that advantage would come from the monopoly you would derive? A. Yes.

Q. So that one of the reasons for leasing and loaning these pumps is that you thereby monopolize the business of your customer? A. Sure, that is one of the reasons.

Q. Now, you say there are numerous garage men and other customers of yours who would not install pumps at all, who would not even have pumps installed on their premises if somebody did not make them a present of one or install one for them or lease or loan it or in some other way furnish a pump practically free of charge to the garage man. What per cent of the pumps that are installed in your territory today do you think would have been installed unless someone had furnished the pump practically free of charge? A. I think about fifty per cent.

195

Q. How long have you been engaged in the practice of leasing and loaning pumps? A. About three years.

Q. How many more pumps are there installed now by comparison than there were three years ago? A. Well, I do not know just how many, but a great many more.

Q. You have been in the business now and you are more or less of an expert; you know something about it? A. I could tell you how many we have installed.

Q. No, I am asking you generally over your territory? A. Well, I would judge sixty per cent more.

Q. Then in the last three years only ten per cent
197 of the pumps that have been installed have been sold or could have been sold to garage people, am I right? A. I believe you are right.

Q. What companies sell pumps in your territory, if any, pump companies? A. You mean who do we buy from?

Q. No, I mean— A. (Interruping.) Or who sells?

Q. Yes, who sells pumps to the individual garage? A. The Bowser.

Q. Anyone else? A. Wayne, Milwaukee, Raymond, and others possibly.

Q. Now, they all sell in your territory? A. Yes, sir.

198 Q. Do they sell to the individual customers? A. To the individual customers and to jobbers, oil jobbers.

Q. You do not know anything about how many pumps they sell, those pump companies, to the individual customers, do you? A. No, I do not.

Q. How long have pumps generally been leased and loaned in the Ohio territory? A. I think about four or five years.

Q. Would you say it was four? A. About four years.

Q. Since 1915; is that about right? (No reply.)

199

Q. Prior to that time did all garage owners and other retailers of gasoline own their own pumps and tanks? A. Yes.

Q. They did? A. They did.

Q. What has been the increase in the sale of gasoline since 1915 over the time prior to 1915? A. That is, you mean—

Q. (Interposing.) No, generally over the state; that is, if you know? A. Well, I will say seventy-five per cent.

Q. Seventy-five per cent increase in the last four years? A. Well, five years. 200

Q. Well, now, I tried to fix that date first. I do not like to slip back and forth on that. Is that 1915 or 1914? A. Well, cut the per cent then to about sixty.

Q. About sixty per cent increase in the last four years? A. Yes, sir.

Q. Now, if I understand you correctly you say that ninety per cent, about eighty per cent of this gasoline, this increase, would not have been sold through curbstone pumps if the oil people had not furnished the pumps practically free of charge; am I correct? A. That is my opinion.

Q. What was the difference in the economical situation which brought about the change in the attitude of vendors, that the first forty per cent of all sales of gasoline was made through curbstone pumps owned by the garage people themselves, and that the last eighty per cent of the last sixty per cent, say fifty per cent of the total, just roughly speaking, had to be sold through leased and loaned pumps? I do not understand that. A. Well, there is a natural increase in the consumption of gasoline. 201

Q. I appreciate that, but why was it that, although the first forty per cent could be sold readily through

privately owned pumps and tanks, the last fifty per cent had to be sold through leased and loaned pumps and tanks? A. I do not know that it had to be, but it seems to be the case.

Q. I understand it is the case. I gather that from all these complaints that have been filed, that it is the case. But I am wanting to know why you say it was necessarily the case and why you say there would not have been a sale through curbstone pumps unless they had been leased or loaned? A. There wouldn't be many pumps in existence today if the
203 oil companies would not have furnished them.

Q. Why wouldn't there have been? A. Because the garage man does not feel justified in buying them.

Q. You will admit that the first forty per cent of the garage people did feel justified in buying them, won't you? A. Yes.

Q. Yet the last fifty per cent of the garage people did not feel justified in buying them in your opinion? A. Yes.

Q. What is the difference? What fundamental economical situation is there in this that makes a difference in the attitude of garage men? A. Well, if the garage man in a small town had a pump and
204 another man started a garage in the same town he would not feel that he would be justified in putting in a pump, because the other fellow already had one. If he had that business all to himself, he might feel justified in putting it in.

Q. Yet you could clearly show him through figures that the consumption had increased more than twice as much as it had been prior to that period, couldn't you? A. We could, yes.

Q. Isn't it a fact that you could have demonstrated to any retailer of gasoline that if it was economical to sell the previous supply of gasoline through pri-

205

vately owned pumps it would be economical to sell the subsequent supply of gasoline also through privately owned pumps; isn't that true? That you could damonstrate it as an economical fact to any retailer? A. You could possibly demonstrate it to him, but whether you could make him believe it or not—

Q. (Interrupting.) I understand that, but you could demonstrate it, couldn't you? A. Yes.

Q. Isn't it your opinion that many of these garage people refused to buy your tanks and pumps because they knew they could get them by lease and loan from somebody else? A. I will admit that.

206

Q. Wouldn't you be willing to admit that a great per cent of these people who lease and loan oil tanks and pumps refuse to buy them because they knew somebody would give them one? A. I suppose that is true.

Mr. Zechiel: I think it is, too. That is all.

CROSS-EXAMINATION by Mr. Holliday:

Q. Mr. Frech, you have stated, I believe, that if this leasing system were abolished and the garagemen and retail dealers had to own their own pumps probably there would be a reduction of fifty per cent of the number of outstanding or existing curb outfits. How would that reduction affect your business? Wouldn't you sell less gasoline? A. We would.

207

Q. Is it not easier under the present system of furnishing an outfit at a nominal cost to the retailer, is it not easier for the small jobber or the man who is starting into the jobbing or wholesale business to build up his gallonage than it was before leased outfits became prevalent or than it would be if the garagemen all had to own their own outfits? A. It would be much easier.

208 *Charles Frech, Cross*

Q. In other words then, you mean that while there may be the same total of gallonage consumed, it is easier for the small jobber or the one beginning in the industry to get a proportion of that gallonage by getting a new customer to install a pump, a customer who had never sold gasoline before; is that your idea? A. It would be much easier for him to get gasoline and at much less expense in that way —to get gasoline gallonage, than by going into the filling station business.

Q. Your idea is that it gives the jobber a filling
209 station at much less cost than if he had to put it on private ground of his own? A. Yes, sir.

Q. From your experience prior to the universal furnishing of outfits by the wholesalers, was it not a fact that the garageman or retailer bought continuously and consistently from one wholesaler for a considerable length of time? A. Yes, sir.

Q. And it was just as hard, was it not, to get patronage from a garageman in those days when he owned his own pump as it is at the present time when he is operating a pump that is owned by somebody else? A. Well, it was hard to get business from them, I know, but I would not say that it was just as
210 hard as it is now.

Q. Is it not a fact in your judgment that there have been more pumps sold in your territory by pump manufacturers on account of the wholesalers furnishing the pumps to the dealers? A. I think so.

Q. Do I understand from your estimates or figures that you have given that there has been as much of an increase as fifty per cent? A. In the past four years?

Q. Yes. A. Yes.

211

CROSS-EXAMINATION by Mr. Myers:

Q. Mr. Frech, what would you say as to the convenience to the public in there being about fifty per cent more pumps than there was four years ago? A. I think it would be a great convenience to the public.

Q. If an order were made to cease and desist against the oil companies from loaning or leasing these pumps, it would be an inconvenience to the public if a great many of these curb outfits were taken out, wouldn't it? A. I think so.

212

CROSS-EXAMINATION by Mr. Rubrecht:

Q. In other words, you are of the opinion, are you not, Mr. Frech, that the small dealer has a chance to get his share of the business under the present system, and he would not have the chance if it were restricted to filling stations or agencies? A. I think he has a better chance under the present system.

Q. It does not require as much capital for him to supply the public as it would under the other system? A. As it would through the filling stations.

Q. How? A. It does not require as much capital under this system as it would through filling stations. 213

Q. Would it not tend to drive the industry more nearly to a monopoly than it is under the present system? A. I think so.

Q. That is, those companies that have the capital to put up filling stations in attractive localities would get more of the business and the small shipper could not afford to do that? A. Yes.

214 *Charles Frech, Re-direct*

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Now, Mr. Frech, do I understand you to say that new men can start up in the business easier now than they could when the garage people owned their own pumps? A. No. They could start up easier and with less expense if they were permitted to lease pumps than if they had to go into the filling station game at once.

Q. Now, that is all true; but is it your impression that there must be leased or loaned pumps, or without them we must have filling stations? A. I think so.

215

Q. You think then that if the Government should cancel these leases or ask the various oil people who have such leases to no longer enforce the leases, that that would mean that all the business would go through general service stations? A. No, not all.

Q. Not all of it? A. No.

Q. What per cent do you think would? A. Well, that is pretty hard to determine.

Q. Oh, no, but you are testifying here that that is going to be the result, and if it is pretty hard to determine, I do not believe you ought to testify to that effect; there must be some way to determine it? A. What per cent?

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Q. Something near it. If your fear is that the business is going to be driven through the service station, it must be founded certainly on some kind of facts in your own mind. That must be based upon, or in some measure upon what per cent of the business is going into that channel. Now, what do you think about that? A. I believe that within the next four or five years that fifty per cent of it would go.

Q. Fifty per cent of the gasoline business will be through service station distribution owned by the various gasoline companies? A. Yes, sir. Possibly not that much in the first year or two, but as soon as these pumps become worn out, I do not believe the garage man will install new pumps.

Q. Fifty per cent, however, of it you think would remain? A. I think so.

Q. That that fifty per cent would remain even if all the garage people owned their own pumps? A. Yes, sir.

Q. It is not your impression, however, that if one 218
were to start in today with a new company without any large amount of capital, it would be more advantageous to him to try to sell gasoline to a public that owned its curbstone pumps than to a public that leased curbstone pumps? A. I do not believe I get that.

(Question read.)

Mr. Rubrecht: You say "public"; you mean "dealers."

Mr. Zechiel: Strike out the word "public" and put in "dealers."

The Witness: For my part, I would rather sell 219
to a dealer that has a pump that belongs to us.

Mr. Zechiel: I do not believe you answer the question. Read the question over again, please.

(Question read.)

Mr. Rubrecht: He has answered that.

Mr. Zechiel: But I do not understand that he is a new company; he is an old company. I am asking if he were a new company starting today.

Mr. Holliday: I cannot understand the question myself.

Mr. Zechiel: Strike the whole question out.

Q. If you were a new company starting in today with a gasoline business with a small capital, which do you think would be the most advantageous to you, to sell to dealers who owned their own pumps or to dealers who leased pumps from competing companies or to create dealers leasing pumps from you? I am trying to get your impression as to which is the way for the new company to start in. A. Well, I would say to the dealer who had a leased pump.

Q. But that is not your full answer to the question, I take it. A. If I was taking on a new customer I
220 would rather furnish him the pump.

Q. If you were a new concern? A. If I were a new concern.

Q. And you were starting in business, you would rather go into the business of leasing and loaning pumps? A. Yes, sir.

Q. Than to sell to people who owned their own pumps? A. I would do both.

Q. No, I am trying to get your preference; you say this business ought not to be stopped. A. I do not know as it would make any particular difference to the new company.

Q. Put it this way; suppose every pump man, every
222 garage man who sold gasoline owned his own oil tank and pump outfit, and you start in a new company, would you prefer starting in in the sale of gasoline in that way, selling to whoever you could in the competitive game, or would you prefer to begin leasing and loaning oil tanks and pumps in competition with all other companies who lease and loan oil tanks and pumps where nobody owned his own pump at all? A. Well, I would rather lease and loan pumps.

Q. Now, why would you rather do that? A. If you have a pump leased to a garage man, you know that when you go there you can fill that tank with your

gasoline. If, on the other hand, he owns his own pump you do not know whether that tank is going to be filled when you get there or not; maybe some other oil company has filled it the day before.

Q. In other words, it is the only way you have of monopolizing your customer, isn't it? Or, at least, it is a good way to monopolize that customer? Isn't that the fact now about it? Yes or no. I do not care which way you answer it. Did you answer the question? A. I will say yes, but on the other hand you are monopolizing to a certain extent when you have filling stations, aren't you? A little fellow cannot afford to put in a filling station, where he could afford to put in a pump for a garage man. 224

Q. You say that the little fellow cannot afford to put in filling stations; are you acquainted with conditions generally out in the western territory outside of the State of Ohio? A. No, sir.

Q. You do no know whether the smaller operators out there have filling stations at all? A. I do not.

Q. Did you ever try here to install filling stations, service stations? A. No, sir.

Q. Did you ever figure it over economically to know whether or not you could or could not? A. Yes.

Q. You have you say? A. Yes. 225

Q. You found that you could not do it? A. Possibly could do it, but it would cost more money.

Q. How is that? A. Possibly could do it, but it would cost more money than the way we operate.

Mr. Rubrecht: I can't hear you.

Mr. Zechiel: I can't hear you either.

A. I say it would cost more money to install filling stations than to lease pumps and tanks to the garage men.

226 *Charles Frech, Cross*

Q. You mean the total operation considered in connection with the amount of gallons would cost more to install service stations? A. It would.

Q. Than to lease and loan pumps generally? A. Yes, sir.

CROSS-EXAMINATION by Mr. Taber:

Q. What is the largest town or city you have? A. Middletown, 20,000.

227 Q. Now, if you install a service station, in addition to the capital that you would have to put in to build that station, you would have to employ men to stay there all the time to operate it, wouldn't you? A. Yes, sir.

Q. Whereas the curb pump and tank, you are to no expense only the furnishing of the tank and pump? A. Yes, sir.

Q. So that from that amount, supposing the filling station would sell a thousand gallons a day and the filling station would sell but 250, upon which would you receive the greater return—

228 Mr. Rubrecht (interrupting): You do not mean the filling station, do you?

Q. The service station sells a thousand gallons and the curb pump where you had it would sell only 250, on which would you receive the greatest return or the most profit from your product? A. Do you mean one pump against one filling station?

Q. That is taking into consideration the amount of your investment and the expense of operating the filling station; in other words, would you receive a greater price, a higher price, for the 250 gallons that you sold, over what you would receive from the one that disposed of the 1,000 gallons? A. I do not believe I get that exactly.

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Mr. Taber: Strike the whole question out, and I will try to put it so that he will get it.

Q. Supposing a filling station, a service station, would sell 1,000 gallons, taking into consideration the capital invested in building that station, the expense that you would have in operating it, and the tank placed where you are at no expense, only to put the gasoline into it, and if you furnished the pump and tank for that curb pump, which would give you the greatest profit on your gasoline that you furnished, the one at the little curb pump or the one out at the filling station? A. I don't know whether I could just answer that. Take it this way. The same amount of money invested in curb pumps that you would have invested in that one filling station would bring you in the greater return. Does that answer your question?

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Q. That is one answer, yes. A. But one curb pump against a large filling station would be no comparison.

Q. I see. I think that covers it.

CROSS-EXAMINATION by Mr. Risinger:

Q. How many pumps have you got in Middletown? A. Five.

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Q. What did it cost you to install those five pumps? A. About $1,700.00.

Q. So that at the expense of $1,700.00 you would have five different places in Middletown from which you could sell gasoline and oil? A. Yes, sir.

Q. What would it cost you in Middletown to buy the ground and erect a service station there in a favorable locality to sell gasoline or oil? A. To get a location with an up-to-date filling station, I judge would cost about $15,000.00.

232 *Charles Frech, Cross*

Q. Now, in your business with the capital that you have invested would you be able if you did not have these pumps to buy the ground and establish a filling station in Middletown? A. Not more than one.

Q. It would be doubtful whether you could do that or not? A. Yes, sir.

Q. Would you do that; would you take a chance on a $15,000.00 service station in Middletown? A. No, I don't think so.

Q. So that if you could not put these five curbstone pumps there, you would not be doing any business in
233 Middletown? A. Probably not.

Q. How many pumps have you in Greenville? A. Four.

Q. Do you know about what it cost you to establish those four pumps? A. Possibly thirteen or fourteen hundred dollars.

Q. Could you state approximately what it would cost to buy the ground and erect a filling station in Greenville, a service station? A. It depends a good deal on the location.

Q. Some favorable location there where you could do some business. A. Possibly nine or ten thousand dollars in Greenville.

234 Q. Now, with your capital and the means you have in your company, would you take the chance of spending $10,000.00 there for a service station in Greenville if you were prevented from having these pumps? A. I do not know that we would possibly install a filling station, but we would much rather keep the pumps.

Q. I am asking you if the chances are not if you did not have these pumps there in Greenville, were not allowed to put in these pumps and lease them to your customers, isn't it a fact that you would not be doing business in Greenville at all? A. We would not be doing very much.

Q. What is the capital stock of your company? A. The capital stock is $40,000.00.

Q. What is your surplus? A. About $60,000.00.

Q. Is that what you have accumulated and made out of the business since you have been in the business, seven years? A. Yes.

Q. You have done that by shipping these curb pumps in different towns—how many pumps have you installed altogether? A. Twenty-four.

Q. Do you know approximately what it cost to install all these pumps? A. A little less than $5,000.00.

Q. That would not have been enough to have bought 236
the ground and established one service station? A. No, sir.

Q. With that amount of money you can establish 24 pumps where you can sell and distribute gasoline to your customers? A. Yes, sir.

Q. Do you sell any of this gasoline outside of the State of Ohio? A. No, sir.

Q. Any oil or anything? A. No, sir.

Q. All confined to the State of Ohio? A. Yes, sir.

Q. You buy some pumps in Indiana? A. Yes, sir.

Q. You bought one in Milwaukee? A. Yes, sir.

Q. And some other points? A. Adrian, Michigan.

Q. These pumps you bought for your customers, 237
your oil and gasoline customers, and either sold them to a customer or leased them for a nominal consideration of a dollar a year? A. Yes, sir.

Q. Which is rarely ever paid? (No reply.)

Mr. Risinger: I think that is all.

RE-CROSS EXAMINATION by Mr. Holliday:

Q. Forgetting for the moment the question of the filling station, let us take a concrete case. Suppose that you are a new concern in the jobbing business and

you want to get into business in a certain town; let us say that there are at that time five retailers of gasoline and there are two or three wholesalers that are supplying them with gasoline; which would be the easier way for you to get gallonage in that town, to try and solicit and get business from those five retailers that were already in business or to put some new people into business and get new customers by putting in leased curb outfits to people who had not been in the business before? A. It would be easier to get it by leasing the pumps.

239 Q. Is that what you mean in part in saying that it was easier for a new company or for a company with small capital to get a start and increase its gallonage under this leasing system? A. That is what I meant.

RE-DIRECT EXAMINATION by Mr. Zechiel.

Q. And you think that would be an easier way even though the garage people owned all their own pumps and were free to buy from anybody who came in? A. I think it would, yes.

Q. And you think it would be a more economical way? A. I don't know that I could say it would be a

240 more economical way.

Q. I do not believe you are talking quite loud enough. A. I say I do not believe it would be a more economical way.

Q. What do you think is the limit of that sort of business procedure? How long in this particular town to which Mr. Holliday referred, where there are five companies doing business in one town, and each time a company is organized and starts a new system of pumps is begun in that town, how long can that sort of business procedure in this particular town continue do you suppose? For the next twenty-five years each

company can go ahead and enter into new leases with new people, starting new people in business? A. That would depend on how many new companies came into that town.

Q. There would be a limit, though, wouldn't there? A. Yes, sir.

Q. Isn't it a fact that that sort of practice is likely to overly increase the number of curbstone pumps in a particular town from an economic point of view now? A. An oil company, when they are looking for a location, they usually consider the number of oil companies that are operating in that town. 242

Q. So that if there are too many there they do not go at all? A. No, sir.

Q. They would go if they were free to sell to anybody? A. I did not say that.

Q. They would be more likely to go? A. Well, I don't know about that either.

Q. Do you mean to say that if here is a town of 20,000 people, and every curbstone pump is owned by the owner of the place of business, and here is another town of 20,000 people and every curbstone pump is leased by some competing oil company or by numerous competing oil companies, and they are both up to a maximum number of pumps that would be good business for that town, that a new company organized or a company not doing business in that town would not be more likely to go to the 20,000 town where the curbstone pumps are all owned by the owners of the garages than they would go to the town where they are leased by the garage men? A. That depends on the population of that town. 243

Q. 20,000 I gave it, all up to the maximum point of efficiency. A. With how many oil companies in the town?

Q. 3,000,000, if you want to; I don't care how

many. A. If there were 3,000,000, there wouldn't be anybody else go in in either case.

Q. Suppose there were ten in both cases? A. Ten oil companies.

Q. Yes, but as many pumps as are necessary in both towns, but in one they are all leased and loaned under tying contracts and in the other they are all owned by the garage people free to buy from anybody, and you are a new dealer in either one of those towns, you are a new man on that job, which one will you select? A. I do not believe it would make any difference to me.

245 Q. You would just as leave— A. (Interrupting.) I would stand just as good a show in one town as I would in the other.

Q. Now, this filling station proposition; you say it is your experience that the filling stations are less economical than the pump system, the leasing and loaning of pumps system of doing business. A. I would not say all.

Q. Now, what class of those; what per cent of them in your experience; under what conditions is that true? A. In the smaller towns.

Q. What do you mean by "smaller towns"? A. A town of 7 to 14 or 15,000.

246 Q. In a town from 7 to 15,000 then they would become uneconomical; is that right? A. I do not say that it would be uneconomical; but I do say that you can invest that same amount of money in curb pumps and get a better return.

Q. I guess there is no harm in calling that uneconomical then, is there? It is not good business, is it, to invest money in something that costs more, with less return, or with the same return? Therefore, you will say that in towns, of five or six thousand people generally the curbstone pump is the most economical way of distributing gasoline? A. Yes, sir.

Q. As compared with the filling station? A. Yes, sir.

Q. Or the service station? A. The service station, yes, sir.

Q. Do you think that if there were an order issued which would result in the ownership by retailers of curbstone pumps, gasoline pumps generally, that in the small town it would result in a monopoly to large companies which would install service stations, in these towns of 5 or 6,000 people? A. I think it would.

Q. You think in the town of 5 or 6,000, although uneconomical, nevertheless that oil companies with 248
capital would establish service stations? A. If the curb pumps were disposed of—

Q. (Interposing.) I do not think anybody said anything about disposing of the curb pumps. I said if we got rid of leasing and loaning. Nobody said anything about disturbing or doing away with curb pumps at all, That is not in the question. The question is if the curbstone pumps are thrown open free to competition without tying contracts, in other words, thrown open to free competition in a town of 6 or 7,000, do you think that when the result would be that there would be a monopoly in favor of those companies who would and could afford to put in service stations? A. 249
I think so.

Q. You think in spite of the fact that the service would be uneconomical in those towns, there would still be a monoply in their favor? A. A service station might be uneconomical for the first year or two, but after these pumps were worn out, I do not believe the garage man would reinstall those.

Q. Oh, fifty per cent of them— A. (Interrupting.) They might.

Mr. Lippincott: Oh, he didn't say that.

Mr. Zechiel: Oh, yes, he said 50 per cent of them would remain.

250 *Charles Frech, Re-direct*

Mr. Westfall: That was under an entirely different set of circumstances.

Mr. Zechiel: We will just ask the question again. I think he made the remark before.

Q. I understood you to say a while ago, Mr. Frech, that if the Commission should stop lending and leasing pumps in the State of Ohio, that 50 per cent of the business would be done through curbstone pumps still? A. At present.

Q. I think you said for the present more than that, but ultimately it would be 50. Am I right about that? 251 If you want to change your answer, I am perfectly willing, but I want to get it straight. Do you think that ultimately there would be less than fifty per cent? A. I believe there would.

Q. What would be the per cent of them? A. Possibly 25 or 30 per cent.

Q. 25 or 30 you would say now. No matter what you may have said before. At present, however, you think that 50 per cent would remain? A. Yes, sir.

Q. How long would that 50 per cent remain? A. I couldn't say just how long they would remain. Until these pumps are worn out. I do not believe the garage men will replace the pumps with new ones.

252 Q. Do you think that the condition under which 40 per cent of the garage people own their own pumps is to be supplanted by a condition where only 20, or 25 to 30 per cent of those same people will own their own pumps if service stations come into existence? Straighten that up a bit. I think you said 40 per cent of the business was done in 1915, of the present business was done in 1915 through privately owned pumps. Am I right about that? A. How is that? State it again.

Q. Forty per cent of the present business was done in 1915 through privately owned pumps?

Mr. Holliday: When?

Mr. Zechiel: In 1915.

Mr. Holliday: I understood him to say that this started in 1915.

Q. All right; if it had been one day before; at that time in 1915, 40 per cent of the business was done through privately owned pumps; that is correct? A. Well, at that time all the business that was done at that time was done through privately owned pumps.

Q. You said that was 40 per cent of the business. A. Yes, sir.

Q. Then 40 per cent of the present business in 1915 254 was done through privately owned pumps? A. Yes, sir.

Q. Yet you say that if we were compelled to return to privately owned pumps, only 25 to 30 per cent of that business would remain? A. Yes, sir, of the business which we have now.

Q. Yes, of the business which we have now, which is the same as 40 per cent.

Mr. Holliday: No.

Q. Let's see if that is true. In 1915, 40 per cent of the business was done through privately owned pumps; 40 per cent of the present business was done in 1915 255 through privately owned pumps? A. Yes, sir.

Q. If today we were compelled to go back to privately owned pumps, how much of the business would be done through privately owned pumps?

Mr. Holliday: You mean privately owned pumps of retailers.

Mr. Zechiel: Yes, sir, I am speaking always of these curbstone pumps; I am speaking of all pumps except this question of service stations.

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A. That would be hard to determine.

Q. It is not very hard to determine. Only 25 to 30 per cent you testified to. What is there in the economics of this situation that in 1915 an amount equivalent to 40 per cent of the present sale of gasoline was done through privately owned pumps, and yet today only 25 to 30 per cent of that amount would be done through privately owned pumps, if we were to go back to privately owned pumps? A. Today we have the filling station, but in 1915 we did not.

Q. Was not the filling station an economical possi-
257 bility in 1915 as well as today? A. It was a possibility, yes, but we didn't have it.

Q. Is there any fundamental difference in the economics of the situattion in 1915 and today from that point of view? A. Yes. The consumer will go to the filling station; on account of the filling station being in town, the garage man won't replace his worn out pump.

Q. Let us take up another angle. You say you cannot afford to go into the filling station business, because you cannot make as much profit out of the filling station business as you can out of the retail business; I mean the curbstone business; that is true; that
258 is your testimony? A. Yes.

Q. Therefore you say you have to give the garage people a pump and tank in order to induce those people to deal with you. Correct? A. What I meant by that, Mr. Zechiel, that I could distribute my gasoline over the town to possibly eight or ten points for less money than I could put it at one point with the filling station.

Q. I appreciate that; but my question is whether or not you do not find it to your economical advantage to give away these pumps and tanks in order to distribute that gasoline? A. Yes.

259

Q. In doing so, you give away the investment you have in those pumps and tanks, don't you? A. Yes, sir.

Q. What effect would it have on your business, do you think, if, instead of putting the investment you have in pumps and tanks and giving that away, you would reduce the price of gasoline to meet this filling station competition? A. Reduce the price to that particular customer?

Q. Well, to all your customers. You are giving them all pumps, aren't you? A. Yes, well, these pumps—we figure that as a part of our equipment, you know.

260

Q. I understand, but suppose you do not have those pumps at all, you do away with them, you do not invest capital in pumps at all, but instead you reduce the price of the gasoline to cover that difference, what effect would that have on your business? A. It would be pretty hard to determine now to reduce the price of gasoline.

Q. You know what your capital investment is in pumps? A. There would be no difference to us whether we gave the man a pump or whether we gave him that much of a reduction in the price of gasoline, or give him a rebate as far as that is concerned.

26:

Q. If it is fundamentally an economical thing to do, it ought to attract customers just the same, the reduced price of gasoline or installing a pump and tank under a tying contract; isn't that so? A. Well, if you reduce the price of gasoline to a customer, you could reduce it very little, and it would take him a long time to pay for that pump, and he would have to pay cash for that pump when he bought it.

Q. That is, of course, assuming that the pump companies would not sell him one on time payments, but you do not know that that is true, do you? A. No

262 *Charles Frech, Re-cross*

it is true, I think. I do not think you can buy them on time payments.

Q. You don't know whether you can or not? A. No, sir.

Q. You wouldn't dispute it if some pump company would testify that they do? A. No, I would not.

RE-CROSS EXAMINATION by Mr. Risinger:

Q. Mr. Frech, if you put a pump in for a customer and it proves not to be a success or not a paying in-
263 vestment, you take the pump out? A. Yes, sir.

Q. You can install it some place else? A. Yes, sir.

Q. If some prospective customer buys a pump and installs it and it is not a success, then he has the old pump on his hands? A. Yes, sir.

Q. The chances are he cannot realize very much out of it? A. Yes, sir .

Q. Wouldn't that fact deter a great many men from going into this business? A. Yes, sir.

Q. Buying these pumps individually? A. Yes.

Q. These pumps you furnish you do not consider you are giving the pump to the customer? A. No.

Q. Mr. Zechiel asked you whether you gave these
264 pumps to them or furnished them for nothing. The pumps are still yours? A. They are still our pumps, yes, sir.

Q. You consider the pumps you have there as part of your equipment? A. Yes, sir.

Q. You have a lot of motor trucks hauling this oil and distributing it? A. Yes, sir.

Q. Have tanks to store it? A. Yes, sir.

Q. And consider the pump in the same light you do your motors and equipment; it is just as well to reduce the price of gasoline and ask the customer to come to the tank and haul it away himself, is it not? A. Yes, sir.

Q. That would not be good business, would it? A. That is my answer.

Q. The chances are if you would undertake to do that you would not have very much business? A. No, sir, not very much nowadays.

Q. In order to transact your business you must have oil tanks, haul it to the customers and deliver it on the ground? A. Yes, sir.

Q. You found out by furnishing the pump and having a place to put the pump, you could do the same business and make more money and be more sucessful than to require the dealer to buy the pump? A. Yes, 266
sir.

Q. Your customers have the privilege of buying a pump? A. Yes, sir.

Q. That is at their option; if they want to pay for the pump, they can do it? A. Yes, sir.

Q. Of course, then, if they pay for them, you would have no control over them, would you? A. No, sir.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. How many customers do you have who do not get pumps of you at all? A. You mean dealers? Garage customers? 267

Q. Yes, sir. A. Who have their own pumps?

Q. Yes, who own their own pumps. A. I couldn't say now.

Q. Do you know anything about what per cent? A. No, I would not. We have a lot of customers that I never met personally, and I couldn't say just how many we have.

Q. Then you do not know what per cent of your business is done through leased pumps at all? A. Well, we sell a lot of gasoline and kerosene to farmers. It would be easy enough to figure what per cent we

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put through our own pumps, but I couldn't do it here.

Q. The farmers do not have any of your leased pumps? A. No.

Q. You do a large business with them? A. Yes, sir.

Q. Now, do you know about how much business you do with garage people who own their own pumps? A. Not very much.

Q. But you cannot get down to a final figure closer than that? A. No, sir.

Q. You do not know about how many customers
269 you have of that sort? A. No.

Q. When you remove these pumps do you remove the tanks also? A. Yes, sir.

Q. You take them out of the ground? A. Yes, sir.

Q. Would there be any reason why the owner of the garage could not sell his pump and tank if he cared to and got tired of dealing in the oil and gas business? A. Why he could not sell it?

Q. Yes; there is a market for second-hand pumps, isn't there? A. Oh, yes.

RE-CROSS EXAMINATION by Mr. Holliday:

270 Q. Mr. Frech, I think that there is some confusion caused by the seeming assumption by Mr. Zechiel that if all the garage men and retailers owned their own pumps that they would buy their gasoline from any tank wagon that happened to come along. Now, is that true? Take a concrete instance again? Suppose a town in which there are five garage men that own their own pumps and they are being supplied by two or three wholesalers. Isn't it a fact that those garage men will continue from month to month to deal with the one particular wholesaler with whom they are carrying an account, and that it is a very difficult thing for

a new wholesaler in that town to get that garage man to transfer the account to him? A. Yes.

Q. Much more difficult than to seek a gallonage through creating new customers who have not been in the business before? A. Yes, sir.

Q. As a matter of fact, in your judgment, hasn't this adoption of the system of leasing or loaning of pumps resulted in a keener competition among the wholesalers and an easier competition for the wholesalers with small capital? A. Yes.

RE-DIRECT EXAMINATION by Mr. Zechiel: 272

Q. How do you know that to be true? A. We have had the experience.

Q. You mean with all the rest of the smaller concerns, or just your own? A. We were a small concern ourselves.

Q. And you tried to sell, did you, without leasing and loaning? When did your company begin its operations? A. I got into the business about seven years ago.

Q. Was the company in existence prior to that? A. Yes.

Q. How long had it been in existence prior to that 273
time? A. Well, I don't know just exactly how long. It started in under the name of the Pure Oil Company, and in 1914 we incorporated under the name of the White Star Oil Company. In 1914 we had one station, tank station in Eaton; now we have six. We have gone into these different towns and got a pretty nice business in a short time by using pumps.

Q. You had no business at all prior to the time you went into the leasing of pumps? A. Oh, yes, we had business.

Q. To whom did you sell gasoline at that time? A. To the farmers mostly.

Q. Didn't sell any to garage people at all? A. Not until 1914.

Q. Not until you put in your own pumps and tanks? A. Well, we did not start to putting in pumps right away.

Q. Did you sell gasoline? Were you successful in selling gasoline before you put in pumps and tanks? A. We were not.

Q. You did not sell any to the garages until you put in your own pumps? A. Yes, I sold to some garage people that had a 50-gallon tank at the
275 back end of the garage, and they would draw the gasoline out into a bucket, measure it and take it out and put it in the machine.

Q. At that time when you began leasing and loaning pumps, were there pumps in your territory, curbstone pumps owned by garage people? A. Yes, sir.

Q. Did you say you could not sell to any of those? A. We did not.

Q. Did you try? A. Yes.

Q. You solicited them all? A. I think there was only one pump at that time.

Q. So that, as a matter of fact, a very small per cent of the gasoline gallonage went through pumps at
276 all in your town? A. There was a very small per cent of gasoline sold at that time compared with what is sold now.

Q. I am talking about the relative per cent, whatever was sold, however? A. Yes, sir. The most of the gasoline was at that time sold direct to the consumer, had a tank in a little garage or his stable.

Q. Your experience at that time when you were trying to sell to garage people who owned their own pumps is limited to just that one town and that one experience where there was only one pump in the town; is that right? A. Yes.

277

Q. You don't know whether or not if you had been in a larger community, where there were numerous oil tanks and pumps owned by garage people themselves you could have sold without leasing and loaning oil tanks and pumps, do you? A. During 1914 we installed a station at Germantown, and we got a little business there without installing pumps.

Q. You mean you sold to whom? A. To the garage men.

Q. How many pumps were there in Germantown at that time? A. Two, I believe.

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Q. You sold to one of those? A. Yes, sir, sold to one of them.

Q. Did you try to induce anybody else to put in a pump in Germantown at that time to meet the prospective increase in gasoline consumption? A. Why, we always try to do that, but I don't know whether we did in this particular case in Germantown.

Q. What was your experience in those towns, larger towns than you are speaking of now; were there many pumps? Have you had any experience? A. Well, when we got into the larger towns, we started leasing pumps right away.

Q. At that time you had adopted the practice of leasing pumps? A. Yes.

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Q. You did not make any efforts to sell to owners of pumps? A. There were very few owners of pumps in those towns.

Q. So as a matter of fact, you do not know whether or not the private ownership of pumps in those larger towns would result in a ready market for newcomers or not, do you? You have never experienced it, have you? A. I do not get that.

(Question read.)

280 *A. C. Harvey, Direct*

A. C. HARVEY was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name and your address? A. A. C. Harvey, 246 North High Street, Columbus, Ohio.

Q. What is your position with your company?

Mr. Ford: What company is he with?

Q. What is your company? A. The Ohio Cities Gas Company.

281 Q. What is your position with that company? A. I am one of the attorneys.

Q. As attorney for the company, do you have charge of the distribution or anything to do with the distribution of their product? A. Well, not particularly, except as legal questions arise in distribution.

Q. You do not know anything about their general distribution and their methods of doing that? A. Well, I know only a little about their method of distribution.

Q. Do you know the territorial extent over which they do business? A. Well, the distribution business extends over parts of Ohio and the State of New

282 York, that is, part of the state I mean, part of the State of Pennsylvania, and to some extent in Vermont, in Massachusetts and in New Jersey and West Virginia.

Q. Who is your general manager? A. You mean of the distributing business?

Q. Yes, of the distributing business? A. Mr. S. M. Coen.

Q. Where is Mr. Coen; what is his address? A. He is located at the principal office of the company here.

Q. Is he in the city now? A. I do not think he is, but I couldn't say positively to that.

Q. Who is in your office now who knows about the sale and distribution of your gasoline and the use of oil tanks and pumps in connection therewith? A. Mr. Coen is the head of that division.

Q. Your company is engaged in the sale and distribution and the leasing and loaning of oil tanks and pumps in connection with your business? A. Well, in some few instances we have purchased one or two pumps at times; that is, in lots of one or two or perhaps three or four, and had those pumps, that is, one pump shipped by the pump works to a customer, and we, as I understand the practice then, have always 284
received the pump and uncrated it and employed workmen to install it.

Q. But you had it sent in to you for the one particular customer? A. Not exactly. I did not mean that. I think they usually have it sent to the customer, but we receive it at the customer's place of business and uncrate it and install it, using our own workmen, the workmen that we employ to excavate, and plumbers to put in or connect up the tank.

Q. From where are these pumps and tanks sent? A. Pardon me until I finish.

Q. Oh, I thought you were through. A. And electricians to do any electric wiring or anything of that 285
sort, and after it is installed, why there have been instances where we sold the pump and the tank to the customer, at a price which represented a profit to us of 20 per cent and 10 per cent on the cost of the pump. At least, that is the case in pumps that I think the distributing division purchased from the Wayne and perhaps from the Bowser people also. And the pump belongs to the customer as soon as he pays for it. These payments are usually one cent a gallon on what he uses and the price, if they have a written agreement, the price is fixed in there. At least, in

286 most instances our practice is that he has the option of paying cash or paying for it at the rate of one cent a gallon.

Q. Do you ever lease or loan these equipments? A. Not during the last six months.

Q. Prior to that time you did? A. Yes, I think the company went into the distributing end of the business in a small way in the year 1917, and took over other companies that had pumps installed for a nominal rent. My understanding is that there are some of those pumps still in operation.

287 Q. There are more of those still in operation? A. Yes.

Q. But all your new arrangements, agreements and contracts with customers are all similar to the ones you describe, namely, sale? A. Yes, sir.

Q. Payment to be made on a rebate on the price of gasoline? A. A cent a gallon above the market price. The cent is credited on the cost of the equipment, which cost is stipulated in the written agreement if there is one, and if not, the oral agreement.

Q. Is there a written or an oral agreement or understanding as to what gasoline may be used in this equipment prior to the time that it becomes the property,

288 the exclusive property of the customer? A. There is usually such understanding or agreement, that it is to be used for gasoline purchased from us.

Q. From whom do you have these pumps sent where you install them for the customer? A. In a good many instances they are our own pumps, that is, second-hand pumps or pumps that have been taken out from other places.

Q. Where they are new pumps? A. I believe it is the Wayne Tank & Pump Company.

Q. Of Fort Wayne, Indiana? A. Yes, sir.

Q. And the Bowser Company? A. Yes, I believe they are made there.

Q. And you have them sent directly from the factory to the customer, as you previously described? A. Yes, sir.

Q. Have you ever lost customers because you refused to lease or loan your tanks and pumps to your knowledge? Mr. Coen is the party who has jurisdiction of that subject? A. Possibly he could give you the information on that subject. Those matters are very largely in the control and jurisdiction of the station manager in the various cities in other states. 290

Q. Do you think Mr. Coen could be here tomorrow? A. I would certainly try to have him here, if it is possible to get him here.

Mr. Zechiel: I would appreciate it if you would have him here; he probably knows more about that end.

Examiner McCorkle: We will now adjourn until 10:00 o'clock tomorrow morning.

Whereupon, at 5:00 o'clock P. M., an adjournment was taken until 10:00 A. M., Wednesday, October 29, 1919. 291

THOMAS K. BRUSHART was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name and address? A. Thomas K. Brushart, Portsmouth, 1501 Gallia Street.

Q. What is your business, Mr. Brushart? A. Distributing oil and gasoline.

292 Q. What is your relation to your business? A. I own the business.

Q. Oh, you are the owner? A. Yes, sir.

Q. Do you do business under your own name? A. No, sir.

Q. What is the name of the company under which you do business? A. The Motor Fuel & Lubricating Company.

Q. The Motor Fuel & Lubricating Company? A. Yes, sir.

Q. A corporation? A. No, sir.

293 Q. You own the entire business yourself? A. Yes, sir.

Q. What is the general territorial extent over which you conduct business, Mr. Brushart? A. Well, we have about five counties in the southern part of Ohio.

Q. Is that all the way across the southern part of Ohio or one portion more than another? A. Well, they are bunched in there together.

Q. Who are your competitors? A. The Standard of Ohio, the Pure Oil Company and possibly the Moore Oil Company.

Mr. Taber: Possibly the Moore Oil?

The Witness: I say possibly they come in; the
294 Moore Oil Company comes through there.

Q. What besides the Moore, Pure and Standard? A. That is all.

Q. And others? A. I presume there are a lot of them send their men through there.

Q. Did you say that the Pure Oil Company is a competitor of yours? A. Yes, sir.

Q. In connection with your business in buying and selling gasoline do you also buy and sell pumps and tanks? A. Yes, sir.

Q. Where do you buy these pump and tank equipments? A. From the Wayne Oil Tank & Pump Com-and S. F. Bowser & Company.

Q. Who are all located in Indiana? A. Fort Wayne, Indiana, yes, sir.

Q. Do you buy from any other company? A. No, sir.

Q. How do you have your pumps shipped? In individual lots or carload lots? A. Individual lots.

Q. Are they shipped directly to you or to your customers? A. They are shipped to us.

Q. Do you ever have any shipped directly to your 296
customers? A. I do not recall that we have.

Q. When you receive these pumps, do you order them and receive them for a particular customer? A. No, sir, we aim to keep a pump of some description on hand most of the time.

Q. You never have ordered a pump for a customer? A. Yes, sir, I think we have.

Q. And have placed it with the customer? A. Yes, sir.

Q. And those times you have ordered and received direct from the Bowser or Wayne Company, Fort Wayne, Indiana, do you also recall whether the pumps 297
were so received and placed with customers that leased or had loaned to them such pumps? A. Yes, sir.

Q. Do you lease and loan pumps to your customers generally? A. Not generally.

Q. You do some? A. Yes, sir.

Q. To some extent? A. Yes, sir.

Q. Do you also sell to your various customers? A. Yes, sir.

Q. Those pumps that you sell to your customers, have you had those shipped directly to the customers? A. No, sir.

298 *Thomas K. Brushart, Direct*

Q. All those are shipped to your own warehouse, also? A. Yes, sir.

Q. Do you do your own installation? A. No, sir, we have that done by a plumber or someone else.

Q. Do you deliver your pumps and tanks to the premises of the purchaser or to the user of them? A. No, sir.

Q. They come to your warehouse, and get them? A. The plumber usually does, the man that sets them up.

Q. Do you uncrate your pumps and tanks before
299 you lease or loan them or sell them? A. The plumber—

Q. Not until the plumber comes to get them are they uncrated? A. Yes, sir.

Q. He comes to get a particular pump to install in a particular place? A. Yes, sir.

Q. How many leases and loans do you have in a general way? A. Oh, I suppose twelve or fifteen.

Q. In how many instances in a general way have you sold pumps outright to your customers? A. Well, just two.

Q. Do you have customers to whom you have neither sold or leased or loaned pumps? A. Yes,
300 sir.

Q. In connection with your business you are acquainted generally with the whole territory over which you sell your goods and products? A. Yes.

Q. You have been over it personally, haven't you? A. Yes, sir.

Q. What has been your experience? Do retailers of gasoline commonly have more than one oil tank and pump installed on their premises? A. No, sir.

Q. The general custom you think is to have just one, isn't it? A. Yes, sir.

Q. And where you have leased or loaned your equipment your customers buy only gasoline from you? A. Well, not always.

Q. Is that the general practice? A. I would say as a general rule they buy our products.

Q. Where you do not deliver oil and gasoline to customers who have a leased oil tank and pump, do you sell to them continuously or do they buy from competitors of yours as well as from you? A. Well, our trade stays pretty well with us. Lots of people divide their business up. Lots of them do not. 302

Q. That is, those who own their own tanks and pumps are likely to divide their business with several oil companies? A. Yes, sir.

Q. Do you consider the loaning and leasing of oil pumps and tanks on tying contracts for a nominal consideration sound business practice? A. Yes, sir, I do.

Q. What is there about the practice that makes you say it is a good sound business practice? A. Well, to stay in the oil business you have to have the gallonage, and to get that you have got to make it worth the customers' while to handle it, and the man does not want to handle gasoline for one cent and invest from $200 to $400 in equipment to handle it with. 303

Q. So that it would not be profitable for anybody to retail gasoline unless he were underwritten by the owner or the seller of the gasoline. A. Not as a business proposition of selling gasoline alone, no.

Q. So you do it because in that way you are enabled to get a corner on your customers and hold your gallonage up? A. We feel it is fair to him to do that.

Q. No, you do not answer my question. A. I do not know that I got your question.

304 *Thomas K. Brushart, Direct*

(Question read.)

A. We do it to hold our gallonage up.

Q. And if you could not retain your customer by entering into these tying arrangements with him so that he is compelled to buy from you, you feel that you would lose your gallonage. A. We would have to take other means to get the gallonage.

Q. If you will just answer my questions— A. Well, yes.

Q. Do you install these leased pumps for every cus-
305 tomer who asks you to install them? A. No, sir.

Q. Did you ever lose a customer because you refused to install a pump for a nominal consideration? A. Possibly, yes, sir.

Q. You are not sure about that? A. No, sir.

Q. Did you ever try to sell gasoline to a customer who had leased a pump from some competitor of yours? A. We have sold gasoline in that manner, yes, sir.

Q. Did you ever try to sell to such a retailer and be unable to do so because of his arrangements with a competitor of yours? A. Well, we do not solicit business that are users of other people's pumps. I
306 would say that we did not solicit that business.

Q. Never have solicited that business? A. No, sir.

Q. Why don't you solicit it? A. Well, it is not fair to the competitor.

Q. Oh, you are just doing it out of generosity to your competitors? A. That is what we regard as a business principle, yes, sir.

Q. Why is that necessary, that you regard that as a business principle? What is there back of that sort of thing? A. The other company has an investment there on which they should get a return.

Q. That is, by return you mean the other company should get the gallonage? A. Yes, sir.

Q. If, then , the other company did not have the investment, you would not be obligated, would you? A. No, sir.

Q. So that you cannot sell to your competitors' customers who have these lease agreements because of the fact that they have a lease agreement; isn't that so? A. We have sold them.

Q. You have never solicited them? A. No, sir.

Q. But you have sold them? A. Yes, sir.

Q. That was not fair to your competitor? A. If 308
a man needed gasoline and we had it, and he asked us for it, we let him have it.

Q. Is that a common occurrence? A. Not necessarily, no, sir.

Q. So that you might practically say you do not solicit or sell gasoline to a customer who has a lease agreement with a competitor; that is true? A. Yes, sir.

Q. Now, if your competitors had no lease agreements with these customers, wouldn't you be at liberty to sell them? A. Yes, sir.

Q. And wouldn't that increase your gallonage? A. 309
Yes, sir.

Q. And if nobody leased or loaned oil tanks and pumps and entered into tying contracts with retailers of gasoline, wouldn't that enable you to conduct your business with less capital investment? A. No, sir.

Q. It would not? A. No, sir—and get the gallonage.

Q. Don't you invest money in your tanks and pumps? A. Yes, sir.

Q. How much does each one cost you? A. From $200 to $400.

Q. You have about thirteen of those installed? A. Yes, sir.

Q. You have something like between three and four thousand dollars invested? A. Yes, sir.

Q. How much have you invested in your business generally? Did you tell me? What is your capital investment? A. We have no capital.

Q. What do you do business on? How much? A. $20,000.

Q. Then you do business on $20,000, and $4,000 of that is invested in oil tanks and pumps, isn't it?

311 A. Yes, sir.

Q. Isn't that $4,000 investment an absolutely dead investment from the standpoint of return? A. Yes, sir.

Q. You never get a cent of that back? A. It is an asset on our books.

Q. Yes, it is an asset, but it never gets you any return at all, though, does it? You do not get any return out of that $4,000 investment, do you, other than gallonage? A. No, sir.

Q. If you could get that same gallonage without that $4,000 invested in pumps, wouldn't you be better off? A. We couldn't get it.

312 Q. Would you or would you not be better off? A. Yes.

Q. Yes. Now, if nobody invested capital in oil tanks and pumps under these lease agreements, neither you nor your competitors, none of you invested capital in oil tanks and pumps under these lease agreements and tying contracts, do you then say you could not hold your gallonage? A. No, sir.

Q. You say you could not? A. No, sir.

Q. That is the only way in which you can hold gallonage then, is because you enter into these tying contracts, is it? A. No, we must have a way to

market our stuff, and if you do not market it through these pumps, you must do it through filling stations, which are decidedly more expensive.

Q. You say you must put it through filling stations? A. Yes, sir.

Q. Did I understand you to say a while ago, or did I not, that you sell to other customers than those who lease or loan pumps—who have leased or loaned pumps? A. Yes, sir.

Q. How about filling stations? A. That business does not amount to anything.

Q. Then you really do not sell anything at all except through leasing stations? A. Well, of course, the business is done through the filling stations of the dealers. 314

Q. How many customers have you anyway? A. Well, I would say twelve.

Q. Twelve customers? A. Oh, no. I thought you meant pumps.

Q. No, I want to know customers now. A. I couldn't say to that.

Q. Oh, yes, you know; you are the owner of this company? A. I could not tell about that.

Q. Twenty? A. We will say twenty.

Q. Is that right in your best judgment? A. Oh, I would say it was more than that. 315

Q. Let us get a fair estimate then. A. Fifty.

Q. Now, you have fifty customers; of those fifty customers, twelve of them are under lease agreements; that is right, isn't it? A. Yes, sir.

Q. That leaves you 38 customers who are not under lease agreements. A. Yes, sir.

Q. Now, you testified a while ago that that business did not amount to anything; do you want to say now as to these 38 customers who are not under

316 *Thomas K. Brushart, Direct*

lease agreements that their business does not amount to anything in your opinion? A. We would not want to lose them, but they just fill in. They are not our big business. They are not what we have to get along with.

Q. How much in per cent do you sell to these 38; how much of your business—gallons? A. Twenty per cent.

Q. Twenty per cent; so that there are 38 customers who are not under leasing contracts who buy 20 per cent of your product; is that right? A. Or less;
317 they do not have more than that.

Q. Not more than 20 per cent. Now, you have no capital investment, however, with those 20 customers, have you? A. No, sir.

Q. Those 38 customers. A. The 20 per cent

Q. On the 38 customers' business, it yields you a greater profit in relation to your capital investment, and less overhead expense; isn't that right? A. Yes, sir.

Q. Now, you say you could not get the customers if you did not have leasing contracts; why is that? A. Well, so far as I know they would be in business.

Q. Do you mean to say that there would not be
318 any sale of gasoline in Ohio if there were no leases of oil tanks and pumps? A. No, sir.

Q. What do you mean to say about that? A. I say that the companies will set out to distribute oil to the consumer through the filling station, and these people probably would not be in business.

Q. How long have you been engaged in the oil business in Ohio? A. Since 1917.

Q. You do not know anything about the business prior to that time? A. No, sir.

Q. Do you know when leasing and loaning generally came into general practice in Ohio? A. I do not.

Q. Do you know whether or not there were curbstone pumps prior to the time when leases and loans were generally entered into by oil companies? A. I do not.

Q. You are not acquainted with the nature of the game at all, or were not in that time? A. No.

Q. What per cent of the pumps in your territory are leased or loaned by some company or other? A. I would say 90 per cent.

Q. 90 per cent? A. Yes. That is curb pumps, of course.

Q. What per cent was leased or loaned in 1917, 320
about, do you suppose? A. I don't know.

Q. You do not know anything about whether this per cent is on the increase or decrease? How many more pumps are there today than there were in 1917, do you suppose, in your territory? A. 50 per cent more.

Q. Fifty per cent more? A. I would think so.

Q. Why were 50 per cent more pumps put in your territory since 1917, than had been in before?

Mr. Rubrecht: If you know.

Q. If you know. A. I don't know.

Q. Isn't it a fact that they were put in because 321
retailers of gasoline would not buy their own pumps? A. That probably had something to do with it.

Q. You do not know whether it is or is not a fact? A. No, sir.

Q. Then you do not know at all whether the leasing or loaning of oil pumps is a necessity in this business, do you?

Mr. Rubrecht: He answered that awhile ago, I think.

Mr. Zechiel: I know he did. I want to know what he says now.

322 *Thomas K. Brushart, Direct*

Mr. Rubrecht: According to all ordinary rules that would be the end of it.

The Witness: I feel that it aids a business. It aids the distribution of gasoline.

Q. I do not think you answered the question. Read it to him.

(Question read.)

A. I do not know any figures on it.

Q. I do not care anything about figures. A. I say that I feel that it is necessary and you say that is not
323 an answer.

Q. I do not say it is not an answer. I do not say it is a good answer either. I want to know what your answer is. A. I feel that it is a good thing to loan the pumps.

Q. Oh, I do not want to know that at all.

(Question read.)

Mr. Holliday: What difference does it make whether it is necessary?

Mr. Zechiel: I think it makes a great deal of difference from the position this witness takes. I think if he will answer it it is very
324 evident.

Mr. Rubrecht: I thought the point here is, which is the best method, not whether it is necessary, but which is the best method.

Mr. Zechiel: If I have to go into the explanation of the reasons for this question, the witness testified it was the only way in which the distribution of this product could be made.

Mr. Rubrecht: Oh, no. He said it would aid the gallonage.

Mr. Zechiel: He said it was the only way in which he could get his gallonage. I do not

think he thinks so now. This man is an adverse witness. This is not a witness for the Commission.

Mr. Rubrecht: I know, but the question of necessity is entirely different thing.

The Witness: It is not a necessity.

Q. Then it is a fact that you would not have to lease or loan pumps in order to get gallonage? A. There would be other ways of getting it, yes.

Q. And you could get it without having those leases and loans at all, couldn't you? A. Yes, sir. 326

Q. Now, am I correct, that your only reason that you gave a while ago for the necessity of leases and loans was that it was in order to get gallonage and you could not get gallonage without it; you did say that, didn't you? A. Yes, sir.

Q. You are willing to modify that? A. We must either sell direct or through these curb pumps.

Q. But you might sell to a curb pump that is owned by a retailer outright, might you not? A. Oh, yes.

Q. Isn't it a fact that numerous customers of yours and customers of all your competitors own their own oil tanks and pumps as distributing agencies? A. Not a large number. 327

Q. Not a large number? A. No.

Q. Let me ask you this question; why don't they own their own oil tanks and pumps? A. The margin that they handle gasoline on is very small, and they do not feel like making the investment.

Q. In other words, they cannot afford to invest the amount of three or four hundred dollars in a curb oil pump; is that the fact? A. For what they would get out of it, is the way they usually express it.

Q. So that the small margin on the sale of gasoline products by the oil companies, allowed by the oil

companies, causes the oil companies to install oil tanks and pumps under lease contracts; is that it? A. That has something to do with it.

Q. Then in other words if your own company were to allow a larger margin, you would not have to lease or loan tanks and pumps because your customers could afford to buy them; isn't that true? A. That does not say they would buy them.

Q. They could afford; you don't know whether they would or not, then; what reason have you for saying they would not buy them if they had a large
329 margin? A. True they would if the business were profitable, if they made a margin large enough for them to make a profit on a small gallonage, which the usual curb pump man has. He does not run anything large. It is a few hundred gallons.

Q. Now, let me ask you this; isn't the pump paid for out of the sale and distribution of gasoline? A. I presume it is.

Q. So if your oil company installs this oil tank and pump you have to pay it out of the sale and distribution of gasoline; isn't that so? A. Well, so I presume.

Q. And if the retailer himself bought his pump
330 he would have to pay for it out of the sale and distribution of gasoline; isn't that true? A. Yes, sir.

Q. Is there any saving to the public then by the practice of loaning and leasing oil tanks and pumps? A. There may be.

Q. How is that? A. Well, whether it is correct or not, the oil companies as a rule think that the method used here is probably the most economical way that they can do it. It gives them a certain gallonage.

Q. You say the oil companies as a rule; do you know that to be true, that oil companies over the

United States or even in Ohio, as a rule, believe that to be the case, or is that only your guess about it? A. They all practice it. Those that are practicing it probably have that reason.

Q. You do not know whether they have that rea- or not? A. Oh, no. I probably have never talked to all of them.

Q. You probably do not want to say that at all? A. No.

Q. You do not know whether that is true about the rest of your competitors, do you? A. No, I don't.

Q. For all you know your competitors may each 332
one of them do it because the other does it; isn't that true? A. They could, yes.

CROSS-EXAMINATION by Mr. Rubrecht:

Q. Mr. Brushart, is there any phase of this question about which Mr. Zechiel has been interrogating you that you desire to explain more fully than simply the categorical answers yes or no, the short answers you have made? A. Yes, there is. I made the statement to a question here that I felt, and possibly the other companies, oil companies, felt, that the curb pump was one of the most economical and efficient 333
methods of distributing gasoline to the public from the oil companies' viewpoint. Now, if that is eliminated and the oil companies go back, have to build filling stations to get the gallonage that they have been enjoying, why then the more wealthy and powerful companies may monopolize the filling stations, will monopolize the filling stations, because the little fellow cannot reach them.

Q. What would be the effect of that in your opinion, Mr. Brushart, now, with reference to the amount of gallonage that would be sold by the larger companies

as compared to the smaller companies? A. It would tend to create a monoply in favor of the larger companies.

Q. In view of that then, Mr. Brushart, as I understand it, are you or are you not of the opinion that if the Commission should issue an order stopping this leasing and loaning of gasoline pumps and tanks, whether or not it would be preferable to then go to the agency proposition or to filling tank or filling station proposition or to continue as it is—which would you say would be preferable? A. Well, I don't know.

335 Q. Take it from the point of convenience to the public; which would be more convenient to the public in getting gasoline, by the method of the filling station and the agency proposition or the present system? A. Well, the curb pump answers a certain want, and that is, that everybody—you or I cannot sell everybody; and everybody has their own friends where they want to deal, and I think the little dealer enjoys a certain amount of patronage that the other cannot get as long as he can stay in business.

Q. And the little fellow hasn't the money as a rule to buy a pump or tank, has he? A. No.

Q. Therefore, it would in your opinion drive the
336 business into the hands of the large corporations, would it not? A. Yes, sir.

Q. And you little fellows would suffer from it? A. Yes, sir.

Q. Do you think it would be advantageous to business, to the industry to drive it all into the agency method, that is, appointing agents of the wholesaler? A. I don't know.

Q. You are in the business. Do you think it would be more advantageous and convenient and not any more expensive to install agents of yours throughout your territory, which would include the expense of

auditing, bonding and liability insurance and so on; do you think that would be advantageous over the present system or not? A. I couldn't say until I know what the proposition to create satisfactory agents would be.

Q. Are you of the opinion or not that in order to keep up your gallonage you would have to have some control over the output; isn't that right? A. Yes, sir.

Q. Now, suppose you had to make all of the men you had now out selling your product—supposing you had to make them all your agents, wouldn't it increase the expense of the product of your business—of the 338
sale of it I should say? A. Yes, sir.

Q. In other words the pump, the curb pump, is the utility for the little fellow and the filling station is the utility for the big fellow in the business; isn't that right? A. Exactly.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Do you understand that the order of the Commission is to drive out the business of the curb pump and put it into filling stations? A. No, sir.

Q. You do not understand the complaint to be based on that sort of theory, do you? A. I have not— 339

Q. It is not your understanding that there is any intention on the part of the Commission to prevent you from selling your product to a curbstone pump man, is it? A. No, I do not understand it that way.

Q. There is no reason is there as far as you can see why all the pumps that are installed today won't remain in installation even if the Commission does issue an order compelling you to cancel contracts of that sort, and everybody else in a competitive business in Ohio, cancelling contracts of that sort; you do not know of any reason why the Bowser Pump Company

340 *Thomas K. Brushart, Re-direct*

and the Wayne Pump Company and the Cincinnati Pump Company won't continue to sell pumps to these various garages and grocery men or why you still cannot sell pumps to those people; there is nothing to prove that, is there? A. Unless the storekeeper or the druggist, whichever you mention, does not feel that he can make the investment.

Q. But whenever he can make the investment he will buy the pump? A. I don't know that he will.

Q. You mean he won't? A. I don't know that he won't.

341 Q. If he can make money out of it do you mean to say he won't? A. He can't ever hope to make the money out of it that he makes out of his other line of goods.

Q. That is not the question at all. It is a question whether he can make money out of it. A. They feel they never have made any money out of them.

Q. Do you mean to say all the pump people in Ohio who own their own pumps are losing money at that game; is that your impression about the business in Ohio in the gasoline industry? A. I didn't say that.

Q. I thought you said that they could not make anything out of it. A. If a man is not making money, it

342 does not necessarily mean—if a man is not making money, it does not necessarily mean that he is losing money.

Q. Do you mean to say that you think that all these garage people and other retailers of gasoline who own their own pumps have made bad investments? A. I cannot see where they have made a very good one.

Q. You think they have made a bad investment? A. As a money making proposition.

Q. Do you think that the oil companies are making any money or not out of leasing and loaning oil tanks and pumps? A. Some of them feel that it is no more

than right that they should take the obligation of furnishing these pumps for the reason that the dealer is unable to make a fair profit on the handling of gasoline.

Q. Who controls the profit the dealers make? A. I don't know that.

Q. Who controls the profit your customers make? A. Well, there is no direct control except that they, in order to sell must meet competition.

Q. Who does that? A. The dealer, the fellow we sell to.

Q. I am asking who controls the profit which the customer makes? Is there nobody controlling that? 344
Who is responsible for the profit that they make? A. Well, we fix the price at which we sell to them. We say, "We will sell it to you at the tank wagon price. You can get whatever you can for it."

Q. If you fixed your price to them a cent less on gasoline, wouldn't that perhaps enable them to make a fair return on their investment, if they bought their own curb pump? A. I couldn't say that.

Q. Or two cents? A. I could not say that they would be satisfied with that.

Q. Would three cents? A. There isn't very many cents in selling gasoline.

Q. I am trying to find where this limit is. You say 345
that you can make money out of it as a dealer in gasoline, that you cannot only make money but you can afford to add a capital investment that does not even make any return to you of $4,000 out of a total $20,000 in your business, $4,000 that you can sink in oil tanks and pumps, and you say that you carry them; there is nothing physically impossible in your increasing the profit to the customers so that they can carry it, is there? A. That would change the whole economical arrangement of the thing. You would have to consider that.

346 *Thomas K. Brushart, Re-direct*

Q. That changes nothing that I can see except the price of gasoline to your consumers? A. Yes.

Q. That would be all that is necessary, wouldn't it? In fact if everybody in the whole State of Ohio would refuse to install oil tanks and pumps under lease or loan, and you would refuse to do so, it would not affect your gallonage a bit, would it? Wouldn't there be the same consumption by the public ? A. It would affect any individual gallonage, if he did not take means to get the gallonage through some other way, possibly another filling station or something like that,
347 if they would all quit furnishing pumps and pumps were to go out of existence.

Q. No, but you seem to assume that pumps are going out of existence? A. Well, we will need more pumps than we have today if they are not allowed to place them—

Q. If they need more won't they buy them? Won't it be economical to buy them if they need them, if there is a necessity for them? I declare I do not understand your position, Mr. Witness, when you say that dealers or retailers of gasoline canot afford to buy their own equipment, and yet you wholesalers of gasoline make so much money that you can afford not only to
348 run your own business, but to run theirs too. I confess I do not understand that position. (No reply.)

Q. Isn't it a fact that if you were to divide the profits it would settle all difficulty about leasing and loaning oil tanks and pumps; isn't that true; even on your own theory of the small amount of money that these retailers make, wouldn't it do that? I think you are mistaken about the number of pumps that there are that are owned by private individuals. I think the testimony of other witnesses will not bear you out in that particular, at least not all over Ohio. But if that were true, isn't it true that the whole difficulty could be

solved by a re-distribution of profits and leaving the fellow who uses the pump to buy and pay for it out of the earnings he makes on the gasoline you sell him; is that true, or is that not true? A. I am not prepared to say, I cannot answer that question.

GEORGE E. DRAWE was thereupon called as a witness, and being first duly sworn, testified as follows: 350

Direct-examination by Mr. Zechiel:

Q. What is your name and address? A. George E. Drawe, Cleveland, Ohio; 13091 Cedar Street.

Q. With what company are you connected? A. The Lubric Oil Company.

Q. What is your business with that company? A. Manager.

Q. Is that the Lubric Oil Company that is respondent here? A. Yes, sir.

Q. How long have you been connected with that company? A. Since the spring of 1919.

Q. Prior to that time what was your experience 351
in the oil industry, if any? A. None whatever.

Q. When was your company incorporated, if you know? A. About 1909.

Q. 1909? A. Yes, sir.

Q. Under the same name? A. Yes, sir.

Q. You are engaged in the general business of distributing refined oil and gasoline? A. And all petroleum products.

Q. In connection with that business you also lease and loan and sell oil tanks and pumps? A. We have and we do. The reason I make that statement is because of recent months we have sold them and not leased or loaned them.

352 *George E. Drawe, Direct*

Q. How long back have you sold them? A. That has been probably since spring, five or six months.

Q. Since that time have you ever lost any customers because you refused to lease or loan pumps? A. We have.

Q. Do you know from whom the customers bought their gasoline? A. Only from competitive companies.

Q. Do you know the competitive company? A. In each instance I cannot recall that.

Q. Do you know any of the competitors in any instance? A. I cannot state specifically only that we lost
353 customers because they could get that kind of an arrangement from some other oil company.

Q. Do you know whether such oil customers did get that arrangement from some other oil company? A. Not positively; I only assumed it.

Q. Did they any time you were negotiating the sale of your product to them say to you that their reason for not buying from you was someone else was furnishing them? A. Someone else would?

Q. Someone else would furnish a pump? A. Yes, sir.

Q. Subsequently you were unable to sell to those customers? A. Yes, naturally.

354 Q. And it is a fact that pumps were installed on those premises? A. I presume so, yes.

Q. You don't know? A. No, because our interest in the matter ceased with their refusal.

Q. What is your practice now in that respect? You say you sell them? I mean, more in detail about that sale practice. A. Our sale is a sale practice. Our practice is an outright sale where we can get it; on time payments if a man establishes his financial responsibility, on the part payment plan.

Q. How many pumps have you sold since you started that policy? A. I cannot state the exact number.

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Q. Oh, just approximately? A. I should say in the neighborhood of fifteen or twenty.

Q. What is the general territorial area over which you distribute your gas? A. Why, the lake—what we call the lake district, from Paynesville to Toledo and down perhaps a county or two into the state you know. We have other territories in the state too, warehouse territories, but mostly confined to northern, central western Ohio.

Q. Where, territorially, were these pumps sold by you? A. Mostly in Cleveland and its environments.

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Q. Did you sell some out in what is generally called the smaller town portion around the City of Cleveland? You say the environments. A. Yes, that would be in a few instances that we have done that.

Q. You don't lease or loan any pumps now to anybody except under prior contracts? A. Except under prior contracts.

Q. How many of those prior contracts do you remember of? A. Approximately 125.

Q. What per cent of your business is done through these leased pump stations? A. Well, our business outside of Cleveland is done largely through them, I would say the greater percentage; it would be over 75 per cent.

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Q. In Cleveland, what is your experience? A. We have a number of filling stations and what deliveries we make aside from that to garages are largely on the leased pump arrangement. We have many individual customers who own their own equipment.

Q. Who are your competitors in Cleveland? A. The Standard Oil Company, the St. Clair Oil Company, the Great Western, the Canfield, Brooks, Columbia, and there may be one or two others. I mentioned the Standard Oil, didn't I?

358 *George E. Drawe, Cross*

Q. Yes. The St. Clair Oil Company does a business in other states than Ohio, doesn't it? A. I believe they do.

CROSS-EXAMINATION by Mr. Ford:

Q. Mr. Drawe, you have named some competitors. Those competitors named are in the territorial limits of Cleveland and vicinity, aren't they? You have other competitors in other territory? A. The competitors that I named—that is what I was asked, our com-
359 petitors, I presumed, in our territory.

Q. Now, you have other competitors, of course, in Toledo? A. We have, yes, other competitors in Toledo. Do you want those in addition?

Q. No, not necessarily. I just wanted to know. A. I said there may be others that I didn't think of.

Q. Have you any knowledge, or have you looked over the list of the fourteen respondents here against whom this complaint has been filed? A. I don't believe I have.

Mr. Zechiel: Do you want that list?

Mr. Ford: Yes, I would like to have the witness look at that list if you have it.

360

The Witness (examining list): Yes.

Q. Having examined this list, do you know whether or not there are competitors of your company engaged in the leasing and loaning of pumps at the present time, not named in the list? A. Yes.

Q. How many would you say, of the competitors that you have named? A. Why, four that I mentioned —five—well, the Standard Oil is on here—four.

Q. You would say that there are four not named in the list of respondents to this complaint that are en-

gaged in the business of leasing and loaning pumps and tank equipment? A. Yes, sir.

Q. Now, I will ask you to state, Mr. Drawe, whether or not a cease and desist order of the Commission would be a serious prejudice to your business in the event that the order took effect before a similar order was made and took effect against your competitors? A. Why, naturally; it would not be equitable.

Q. The invested capital of the Lubric Oil Company is today what, Mr. Drawe? A. What do you mean, all told?

Q. Yes, all told? A. Approximately half a million 362
dollars.

Q. I think you testified to the percentage of gallonage sold through leased and loaned pumps, did you; is that of record? A. Yes.

Q. If not— A. Not specifically but in a general way.

Q. How many filling stations have you? A. 160, I recall it.

Q. About 125 leased and loaned pumps, I think you said? A. Yes.

Q. Can you give us the approximate, aggregate cost to the company of the sixteen filling stations; that is, I mean the installation cost? A. I cannot. 363

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Which of these companies—you say there are four that are competitors—which of these companies that you have named are the four that are not named as respondents?

Examiner McCorkle: Four additional, I understood you to say; four that are not named in here.

Mr. Ford: I don't think it is part of the witness's duty to name competing companies here—to furnish names to this Commission.

Mr. Zechiel: I don't think it is either, but certainly if he testifies there are four, he ought to go ahead and tell who they are. Let us have the record clear about that.

Mr. Ford: I want to protect the witness there, Mr. Examiner.

Examiner McCorkle: Oh, I don't think he would need any protection from his competitors
365 or that he would be injured. I don't think he would like to do it. I appreciate his position in wanting to do it, but when he is on oath and asked about it I don't see how he can very well refuse to do it.

Mr. Ford: The object of my question on cross-examination was not to fix a complaint against any other company.

Examiner McCorkle: I understand that exactly.

Mr. Ford: But simply to show the Commission that an injustice would be worked.

Examiner McCorkle: I see very well your
366 point.

Mr. Zechiel: There are 39 companies made respondent in these cases. It is possible some of these companies are respondents in similar cases. If we know who they are we will know whether they are or not. It is not fair to introduce evidence against the Commission's position here without knowing who these parties are and whether or not they are respondents.

Mr. Ford: The witness will not be able to answer that question.

Mr. Zechiel: Let us see if he is.

The Witness: May I hear the last question, please? I said four; I may want to qualify that. I don't see the St. Clair Oil Company.

Q. You don't know whether they are respondents in a similar proceeding, do you? A. I do not; I don't see the Great Western; I don't see the Columbia.

Q. The Columbia Oil Company? A. The Columbia Refinery. Did I mention Brooks?

Q. You mentioned Brooks as being one of your competitors. A. Well, I don't see them on here. That would only be three then.

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Mr. Myers: That is four.

The Witness: All right.

Q. Now, you testified that it would be to your prejudice were you ordered to cease and desist and these competitors were not. It is a fact, however, that you are not even leasing and loaning any more? A. That is very true. I do not say that we would not do it.

Q. You are not doing it now? A. We don't happen to be doing it now.

And thereupon, at 12:15 o'clock P. M. a recess was taken until 2 o'clock P. M. 369

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2 o'clock P. M.

After recess.

ELBERT J. SMITH was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your full name? A. Elbert J. Smith.

Q. What is your address? A. 118 Hartford Avenue, Canton, Ohio.

Q. With what company are you connected? A. With the Canfield Oil Company.

Q. What is your position with the Canfield Oil Company? A. Manager of the Canton branch.

Q. Is that the Canfield Oil Company that is one of the respondents in this proceeding? A. I think it is. The Canfield, of Cleveland, Ohio.

Q. How long have you been connected with that company? A. Since July 1st, 1919.

Q. What is your experience in the oil industry, prior to that time? A. About eight years.

371 Q. With what company? A. I started with the Freedom Oil Works and the Standard Oil Company.

Q. You started with the Freedom Oil Works? A. Yes, sir.

Q. How long were you with that company? A. About nine months.

Q. When did your service of nine months with the Freedom Oil Company terminate? A. That was about eight years, not quite eight years ago.

Q. 1911 or '12? A. Yes.

Q. And after that time you were with what company? A. Standard Oil.

Q. For how long? A. A little over two years.

372 Q. And then? A. With the Canton Oil and Grease Company.

Q. What was the business of the Canton Oil and Grease Company? A. Marketing petroleum products.

Q. How long have you been with that company? A. Four years, a little over four years.

Q. Does that include all the time up to your present employment? A. Yes, sir.

Q. Mr. Smith, while you are with the Freedom Oil Works, did that company, to your knowledge, lease or loan any oil tanks or pumps? A. No, sir.

Q. While you were with the Standard Oil Company of Ohio did that company lease or loan oil tanks or pumps? A. No, sir; not so far as I know.

Q. While you were with the Canton Oil and Grease Company, did that company lease or loan oil tanks or pumps? A. They did not.

Q. While you were with the Canton Oil and Grease Company did your competitors lease and loan oil tanks and pumps? A. Yes, sir.

Q. Who were your competitors at that time? A. Standard Oil.

Q. Any others? A. Freedom Oil Works, National Refining, Oil City Oil and Grease. 374

Q. Any others? A. No, that is all that marketed gasoline.

Q. Did all these companies who were competitors of yours at that time lease and loan oil tanks and pumps? A. I don't know that they did.

Q. While you were with the Canton Oil and Grease Company, did you ever lose any customers because you refused to lease or loan them tanks or pumps? A. I don't know that we lost any of our own customers, but we could have probably sold some that we didn't sell.

Q. Did you ever solicit a garage man or other vendees of gasoline and were refused because they were under contract with competing companies? A. Yes, sir. 375

Q. Was that a frequent occurrence or not, in your experience? A. No, sir.

Q. Did you frequently solicit customers of competitors of yours who have had these lease contracts? A. I have solicited them a few times and found they had a contract, and I didn't bother them.

Q. After that you didn't bother them any more. What is the capital investment of the Canton Oil and Grease Company? A. Capital stock?

376 *Elbert J. Smith, Direct*

Q. Yes. A. $10,000.

Q. With whom was your trade when you were with that company, in a general way? A. Mostly with the garage trade. There were five of the leading garages in the city that owned our company.

Q. And you sold gasoline to no one else besides those companies? A. Yes, sir.

Q. Those garages? A. Yes, sir.

Q. Over what was the territorial extent of your business? A. Not outside of Stark County.

Q. Not outside of Stark County? A. Not out-
377 side.

Q. Now you say you don't lease or loan oil tanks or pumps—I mean the Canton Oil and Grease Company—didn't while you were with that company? A. No, sir.

Q. Do you know why they did not engage in that practice? A. Our stockholders were mostly gasoline owners, sellers themselves; they didn't care to help the other fellow sell, I guess was one principal reason.

Q. You don't understand by leasing and loaning them they would help other people sell? A. Well, it seems to me if we furnish a storage for any cus-
378 tomer we are helping that man to sell gasoline.

Q. Oh, you mean other customers than your own garages? A. Yes, sir.

Q. I understand. A. Our own garage men had their own pumps when the company was organized.

Q. Did you sell any gasoline to any trade that was outside of the general trade territory or scope of these five garages in this city? A. Well ,yes, we did, some. The trade would come in to them. We made a few of those little towns, small towns, with our truck.

Q. The owners of your company were not doing

business themselves individually in those smaller towns? A. No, sir.

Q. Do you know why your company didn't lease or loan oil tanks and pumps in those smaller towns? A. They were not interested in the sale of gasoline only for themselves. They were not interested in expanding. The company was organizd to take care of the trade for themselves and they were not interested in expanding.

Q. They did make these towns? A. Oh, yes.

Q. During the time that you were connected with the Canton Oil and Grease Company, did that company ever sell any oil tanks and pumps? A. Yes, sir. 380

Q. Where did they sell those? A. Mostly to our stockholders. When one of our customers would want an outfit, we would buy it generally at a cash sale.

Q. Did you sell any other than to your stockholders? A. I don't remember that we did.

CROSS-EXAMINATION by Judge Chamberlin:

Q. The Canton Oil and Grease Company is not now an operating company, is it? A. No, sir. 381

Q. When did it cease operations, and why? A. Well, the Canfield Oil Company bought us and took us over the first of July this year. I said, no, sir. I am not sure their charter has been surrendered, but there is no Canton Oil and Grease Company.

Q. You are not operating now under that name at all? A. No, sir.

Q. When you were operating as the Canton Oil and Grease Company you were simply a local jobber, were you? A. Yes, sir.

Q. At Canton, Ohio? A. Yes, sir.

382 *Elbert J. Smith, Cross*

Q. What was the capacity of your company to handle gasoline? A. You mean—

Q. About how much— A. The quantities?

Q. Yes. A. We run from 75 to 100 thousand gallons of gasoline monthly, and then the trade which we had in lubricating oils.

Q. Did you give particular attention to oils and greases other than gasoline? A. We did.

Q. You speak of the five leading garages as being stockholders in the Canton Oil Company? A. Yes, sir.

383 Q. What ratio of business done, just as a rough estimate, did you or those five garages do in Canton? A. Oh, I think a little better than 50 per cent.

Q. A little better than 50 per cent? A. Yes, sir.

Q. Did you handle any particular brand of gasoline? A. We called it a brand of our own name generally.

Q. Did you advertise it? A. Not extensively; we didn't advertise.

Q. Have you had any experience in the matter of selling or furnishing under lease or loan, pumps and tanks, since the Canfield Oil Company bought the Canton Grease and Oil Company? A. I have not,

384 with the exception of one Mr. Neide had sold on the installment plan.

Q. Was that an outright sale? A. Yes, sir.

Q. That was at a profit? A. Yes, sir.

Q. From the experience you have had in marketing, what would you say of the economic value of the use of pumps and tanks by lease or loan for the service of the public and the reduction of the cost of distribution? A. Well, it rather appealed to me, the only thing, from the advertising standpoint, and I believe it gives the public a little better service than it does the other way. I don't know.

Q. Why does it appeal to you from the advertising standpoint? A. It pays to advertise, I think. I don't believe it pays to market any gas unless you advertise it. I think that is one of the better ways to advertise. When a man wants gasoline, he is hunting for a pump and he sees that out on the pump.

Q. Is that practice pretty generally adopted by the business generally at the present time? A. Well, I don't know. It is locally with us, I think.

Q. How many years did you say you had been in the marketing end? A. It has been eight years since I commenced, about eight years. I have been off. 386
I have not marketed oil all that time, quite.

Q. You at that time, however, marketed for the Freedom Oil Works? A. Yes, sir.

Q. Standard Oil Company? A. Yes, sir.

Q. Canton Oil and Grease Company? A. Yes, sir.

Q. And the statement that you make now as to the economic value of advertising and distributing is a result of your experience thus gained? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. If I understood you correctly, you said you thought that advertising through the pump was an 387
economical advantage? A. That is my understanding; that is my way of looking at it.

Q. Do you see any reason why that advertising through the pump cannot be done without leasing or loaning the pump, or is it in your opinion necessary to lease and loan pumps in order to advertise? A. Well, if the other fellow owns the pump, it is harder to get it done I think; it is harder anyhow to put it on somebody else's property than it is our own property.

Q. Do you think if he were selling your product and it is good business for you to advertise your prod-

uct, that it would not be good business for him to advertise your product? A. I don't think he advertises it with us locally.

Q. I don't think you answered my question. A. Yes, as I understand the question now, I think it would be a good thing for him to do if he would do it.

Q. Then you think that he, in his business sagacity, would not be likely to appreciate the advantage of that advertising if it is an advantage? A. Of our advertising?

389 Q. Of his advertising your goods? A. Well, I think the man that markets the gasoline generally through the curbstone pumps is not interested very strongly in the gasoline and I do not believe he advertises in our country—in our section. Now, if you could get him to advertise it with his own name or something today, it might help it. I don't believe he is interested in advertising our brand.

Q. He is interested in selling it. A. He sells it as a side issue generally.

Q. If he is selling it as a side issue, he is engaged in that business, isn't he? A. Yes, sir.

Q. If it is to your interest to advertise and he has
390 his agency through which you sell, isn't it to his interest to advertise? A. It would be, if you could get him to see it.

Q. Have you ever tried to get him to see it? A. No, sir, I haven't.

Q. Have you had any experience along that line at all? A. No. I say it is my own supposition.

Q. You never really investigated it at all though, yourself? A. Never tried to get any one to advertise our goods.

Q. No one ever turned you down at all when you did try to get him to use your gas and advertise them? A. For him to advertise them?

Q. Yes. A. I never tried to get anyone to advertise our gas.

Q. Isn't it a fact that before this system of leasing or loaning pumps came into use that the garage men and retailers of gasoline did not put any sign on the pump showing the brand of the gasoline? A. I don't know; I don't believe they did; I don't remember that they did.

RE-CROSS EXAMINATION by Mr. Chamberlin:

392

Q. Well, as you stated a moment ago, usually the curb pump is merely a side issue to some principal business, isn't it? A. Generally so, with us.

Q. That is true in the territory with which you are familiar? A. Yes, sir.

Q. And being a side issue it would not claim first importance in the consideration of the owner? A. No, it is a side issue with him.

Q. And if you had no contractual relations with him or agency with him you could not require him to advertise your goods? A. I don't think so.

Q. And it is your opinion that he would not advertise your gasoline or anybody else's gas? A. I 393
don't think he would.

Q. As long as it was a mere side issue? A. Yes, sir, I don't think he would.

Q. He would not be inclined to keep it separate from anybody else? A. I think not.

Q. The consideration on the part of that kind of an independent dealer is to buy the goods he can make the most margin on, taking advantage of the man who stops, or is compelled to stop and fill at his station? A. Yes, sir, and buying when his requirements need.

394 *Elbert J. Smith, Re-direct*

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. And it is a fact that when a man is independent, he does buy what his requirements demand? A. Well, he generally has his place of buying. He is generally taken care of and—

Q. (Interrupting.) And in answer to Judge Chamberlin's question—

Judge Chamberlin: Let him finish his answer.

395 Mr. Zechiel: Certainly, if he has anything more to say.

The Witness: We generally have our regular customers. He is generally taken care of regularly. If he is missed or passed up he generally calls up his company that he buys from. If he doesn't get service here of course he is free to buy from any place he cares to.

Q. What is your answer then to Judge Chamberlin's question, that these customers do or do not buy from anybody that comes along? A. Well, I think they generally have their own distributors to buy there.

396 Q. And they generally buy from just anybody? A. No, not generally.

Q. That is a very rare thing to do, isn't it, in the gasoline trade? A. I don't know I just understand. It is a rare thing to do, to buy from everyone who comes along?

Q. Yes. A. I should say it was, with us. We pretty nearly have our customers and unless they have some reason, they do not generally change.

Q. And you also said that in your opinion your customers would not be influenced in advertising and

would not advertise because it is a side line. It is true, however, that you don't know anything about that, from your own investigation? A. No, sir, not my own investigation. That is just my supposition.

A. S. HICKOCK was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your address, Mr. Hickock? A. 401 398
Nasby Building, Toledo, Ohio.

Q. With what company are you connected, Mr. Hickock? A. The Hickock Producing Company.

Q. Is that company one of the respondents in this proceeding? A. Yes, sir.

Q. What is your position with that company? A. President and treasurer.

Q. And how long have you been in that position? A. Since it was organized, in 1913.

Q. What was your experience, if any, in the oil industry prior to that time? A. None whatsoever. I was in the department store business.

Q. Does your company also lease or loan oil tanks 399
and pumps in connection with its business? A. We have.

Q. Do you now? A. No, sir.

Q. How long since you ceased to loan pumps? A. July 1st, 1919.

Q. Prior to that time how long had you leased and loaned pumps? A. Why the first four years we were in business we were producers of casing heads. About two years ago we started marketing motor gas, using casing heads and other products as a blend, and for the last two years we have been marketing motor

gas in Toledo and vicinity made from our casing head and other products. About the time we first started in the field to market our goods in Toledo our city man who went out had trouble in securing business due largely to the fact that the companies owning their own pumps were handling a particular kind of gas that they had been handling for a number of years and were satisfied and would not put in the new gas that they knew nothing about. And as a result of that we were forced to lease some pumps in order to get an opening, to get our product introduced.

401 a new company just starting in business, trying to market a new product, it is absolutely impossible, our experience was, to get that article introduced without you adopted a method of that kind. Of course, there are advantages and disadvantages connected with it. Most of the customers who are using pumps are small operators, as the larger companies and garages prefer to own their own outfits. They having their own pump, as I said before, and having a gas that is satisfactory, are not interested in changing. And our experience was to get that first start, we entered into leases and put in the pumps and tanks when we first started in business.

402 Q. So if I understand you correctly, do you mean that you found that the prospective customers were divided between those who owned their own oil tanks and pumps, and those who were lessees of oil tanks and pumps? A. Yes, sir.

Q. That you were unable to sell to either class of customers? A. Either class of customers, that is, unable in any volume, to amount to anything. We would now and then pick up someone for a few gallons, but for the first few months there was, you might say, nothing to do.

Q. You say that your product was a new product on the market? A. Yes, sir, unknown. It was an entirely new product. We put it out under our own name. We claimed a superior product at the same price as the other.

Q. Now, since 1919, last July, was it, you say you ceased leasing and loaning? A. Yes, sir.

Q. What is your method of distribution now,if you have any? A. Through our filling stations, principally.

Q. And you do not deliver to garages at all any more? A. Well, we sell some pumps occasionally. 404
We have some garage customers. During these two years, understand, we have picked up in the natural course of business, some garages that have our particular gas, that own their own pumps. We have secured that business during the last two or three years.

Q. How large a business was that? A. How large was what business?

Q. That you have just described, the business you picked up from garages who own their own outfits? A. I could not give you any idea as to that.

Q. I think you can give an idea? A. Oh, it would be impossible. I couldn't give you any idea as to that. I couldn't give you any idea as to that. Our 405
biggest business is done through our own stations. After we got into our game, we saw there were two ways of marketing the goods, through our own stations or using the pumps of other people, and we decided that using our own stations was the preferable way for our particular line of business.

Q. Today about what per cent of your product goes through your filling stations? A. Well, it is hard to say what per cent. The biggest per cent of it.

Q. Seventy-five? A. Fully as much as that.

Q. Let us get it as nearly correct as we can. Seventy-five to eighty per cent? A. It would be impossible to give you a correct estimate. I said the big per cent of it.

Q. I am merely trying to fix a figure that is fair to you and everybody else. Is seventy-five fair to you? A. I wouldn't say. It might be seventy-five; it might be ninety.

Q. Would you say from seventy-five to ninety? A. I would estimate it at that.

Q. At from seventy-five to ninety? A. Yes.

407 Q. During your experience in the marketing of your product, did you ever try to sell gasoline, your product, to a prospective customer who refused to buy for the reason that, he so stating at the time, he was under contract obligation through a lease to buy his gasoline from a competitor of yours? A. Well, of course I had a man that looked after that business and the reports that we got back, as I remember, at the start, were that they were not interested in our gasoline, as they didn't know anything about it. They had been handling a certain gasoline that was satisfactory and they didn't want to change.

408 Q. So far as you remember or have any knowledge, nobody refused to buy from you because of the lease agreement that they entered into with competitors? A. Possibly that might have come up. I won't say it did not because it may have done so. But the majority of cases was because the gasoline was not known.

Q. What is your experience now with respect to garages who owned their own pump and outfits; can you market your product through those outfits, and do you do so? A. We have quite a good many very good customers that own their own outfits and we are selling gasoline to them, yes, sir. But those customers

we were unable to secure early in the game, we are now selling. They would not listen to us until the gasoline was known and introduced. And we introduced it through the leased pumps to start with.

Q. Are you now unable to sell gasoline to prospective customers, they giving as their reason that they are under contract obligation to use the gasoline of a competitor of yours, if you know? A. No, we haven't had any trouble of that kind, to my knowledge.

Q. To your knowledge? A. No.

Q. At the time you were leasing and loaning pumps, or selling same to some of your customers—I believe 410
you did testify you do sell some now? A. Yes, sir.

Q. Where did you buy those pumps and tanks? A. From the Guaranteed Liquid Measure Company, at Pittsburgh.

Q. Do you have those sent to your customers direct? A. Never. They were always billed to the Hickock Producing Company. We carried them in stock.

Q. You carried them in stock? A. Pumps and tanks in stock.

Q. When you were ready to install them you sent to the stockroom and took one of them out and installed it? A. Yes, sir. We had our own men for 411
installing them.

CROSS-EXAMINATION by Mr. Taber:

Q. You say you have ceased to lease any more after the first of July? A. After the first of July.

Q. I will ask you whether you ceased to do that after you had received a letter from the Federal Trade Commission declaring this to be unfair practice, or calling your attention to it? A. I did.

Q. Now, when you started in, this blended casing head gasoline was an unknown quantity in motor fuel in Toledo, wasn't it? A. Absolutely.

Q. And you started in by leasing tanks in which to store this particular gasoline for the trade. I will ask you if, following that, you started out on a campaign of advertising, advertising this particular gasoline? A. We did.

Q. Under what trade name have you sold this? A. High Speed.

Q. And upon each of these pumps, curb pumps,
413 that are in where you are handling that gasoline, that sign appears on it, doesn't it? A. It does.

Q. Do you consider that is an asset in your business? A. I do.

Q. Now, you have several filling stations around town? A. We have.

Q. And you have some out on Dorr Street, haven't you? A. Yes, sir.

Q. I will ask you if at any time it has come to your knowledge where inferior grades of gasoline or fuel oils have been mixed with your product? A. We have had one occasion particularly called to our attention where that has happened.

414 Q. You may state under what conditions that happened or took place? A. It happened along early in the spring, I think it was. A station where we had one of our pumps with our globes on, and further down on the street we had one of our regular filling stations. This was a garage, possibly a mile further up on Dorr Street and the men in charge of our filling station had customers coming in complaining that the gasoline we sold at different stations was not uniform. On questioning one of them he referred to the garage above. He said he had lived up that way and

had been getting gas there for sometime but of late he had had trouble and he had been coming down to this station and he said that was all right. After having that called to my attention on several occasions, I took occasion to investigate and I was informed that occasionally he would—our truck would come along and put in a couple of hundred gallons and the next day when it would be getting low he would put in a like amount of this other grade of gas, which was a cheaper grade of gas that he could buy at a less price because it was of inferior quality. The result was that he was losing customers and we had to inform our customer that unless he wanted to use ours—either take off our globe and sell it as the other gas or discontinue selling him. 415 416

Q. I will ask you in your opinion, in order to maintain your reputation on this brand of gasoline, if it is practicable to sell that to any garage or any buyer that is liable to mix it with other grades of gasoline or motor fuel? A. If it is practicable—

Q. Yes. A. Absolutely not. They don't blend.

Judge Chamberlin: I don't think he quite understood you, did he?

Q. I thought you said it was impracticable? A. It is impracticable to run two together. Our gasoline does not blend. Our gasoline will not mix with the other grades which show a kerosene content and the car owner will immediately notice it. 417

Q. I will ask you what the effect of getting your gasoline mixed up with other and inferior grades would be upon the trade name or your business? A. It would absolutely ruin it.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Mr. Hickock, with reference to your mixing and advertising scheme, it is not impossible for you to require of your customers to put signs above their pumps that they sell your gas, even though the pump does not belong to you? A. You mean do we require them to do that?

Q. Yes. A. Oh, no, no.

Q. You will sell to parties even if they do not put a sign above their pump? A. We would not sell them
419 if we thought their product would be mixed with ours.

Q. Would you sell it if it were not being advertised as your proposition? A. Well, we never had that case come up.

Q. Would you now? You are the president. If somebody wanted to become a customer of yours but didn't want to advertise that brand of gasoline, would you sell him gasoline? A. Not unless we had a surplus and we wanted to get rid of it very bad. At the present time we wouldn't do it because we sell all we make without doing it.

Q. So now you require your customers to agree not to use any blend at all but your product exclu-
420 sively? A. No, we don't require them because that has never come up.

Q. But that is your policy, however? A. Yes, sir. We pride ourselves we put out a quality of gasoline that is exceptionally good and we are trying to maintain that standard.

Q. Is it a fact or not that many of your customers do use your globe signs up there above their pumps —is that what you use, a globe sign? A. Yes.

Q. I am just assuming that because I think that is what is generally used? A. I think practically all of our customers use it.

Q. That is true whether your customers own the pumps or lease them, isn't it? A. Yes, sir.

JOHN S. SHEEAN was thereupon called as a witness, and being duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name? A. John S. Sheean.

Q. Where do you live? A. Cincinnati, Ohio, 873 Academy Avenue.

Q. With whom are you employed? A. S. F. Bowser & Company, of Fort Wayne, Indiana.

Q. What is the S. F. Bowser Company? A. Manufacturers of oil tanks and pumps, self-measuring.

Q. As salesman, do you have charge of a particular 422
territory? A. It is composed of Butler—

Q. Just in a general way? A. About eight counties.

Q. In what part of the state? A. In the southwestern, missing Hamilton County.

Q. What is your general plan and method of selling your company's product? A. My plan is, of course —runs along on the same line as general salesmanship does, calling upon the trade which would be liable or likely to use any of our commodities, and try to show them the advantages of having something of that character to increase their business and minimize the losses to such an extent that it would be a 423
profitable proposition to them to purchase an outfit of that character.

Q. In that regard do you call upon numerous persons throughout your territory over which you are supervisor? A. Any person who handles oil in any manner at all, whether they handle it for sale or for their own individual use.

Q. In case you sell some one a pump, how is that pump delivered? A. In case I sell a pump, the order is taken; the order is sent to Ft. Wayne; they pass

424 *John S. Sheean, Direct*

upon it, and deliver it, I suppose at their earliest convenience.

Q. Directly from the factory? A. Directly from the factory to the customer.

Q. How long have you been employed by the S. F. Bowser Company, Mr. Sheean? A. It is pretty hard for me to tell; I guess along about between twelve and fourteen years.

Q. During that time how much of your employment was in the State of Ohio? A. All of it with the exception of possibly three months in Illinois and about
425 three weeks at Ft. Wayne, and about four or five weeks in Kentucky.

Q. Have you always been in the same territory in which you are now employed? A. Well, no, before the first of this year I was always in Hamilton County.

Q. For my own information, where is that? What part of the State is Hamilton County? A. Cincinnati.

Q. During all that time you have solicited and sold oil tanks and pumps for the S. F. Bowser Company to various parties in your territory? A. Yes, sir.

Q. Are you acquainted with the practice of leasing and loaning oil tanks and pumps to various garage
426 people? A. No, only what I have been told by people with whom I come in contact with reference to the sale of the outfit, they have intimated that they would not buy because they could get an outfit for nothing or on a lease.

Q. From your experience and your observation, when did that kind of practice first come into your territory? A. I do not really recall; it has been quite a little while ago.

Q. Would you venture a guess as to when in years: say three or four or five or six? A. About three or four years, I guess.

Q. Have you ever tried to sell a customer an oil tank and pump who refused to buy, he giving the reason that he could secure such an outfit by loan from someone else, an oil company or otherwise? A. Yes, sir.

Q. Has that happened frequently or not in your experience? A. Well, it has happened possibly fifteen or twenty times to my knowledge.

Q. You are very well acquainted in a general way with the oil tanks and pumps and their distribution throughout your territory? A. Yes.

Q. What is your best estimate as to the number 428
of oil tanks and pumps that have been sold to retailers of gasoline as compared with those that have been leased and loaned during the last three or four years? A. I could only say that in our part of the territory.

Q. That is in Hamilton County? A. Yes, sir.

Q. You are speaking of that? A. Yes, sir.

Q. Well, in Hamilton County? A. I guess it would be about 33 1/3 per cent of the outfits sold—now, you want to bear in mind that it would not be all the outfits that were sold, because, as a rule, these outfits that are leased are largely to public garages, and I do not recall of any case where they have ever been leased to private garages. 429

Q. Then, if I understand you correctly, about 33 1/3 per cent of those that are distributed today —I mean that have been distributed and are now in place in the various public garages, have been sold to those garages? A. Yes, sir.

Q. What, in your opinion, has been the effect on the sale of oil tanks and pumps of the practice of leasing and loaning such pumps by various oil companies? A. I do not understand your question.

(Question read.)

A. Demoralizing to the salesmen.

Q. Has the relative proportion of pumps sold to garage men increased or decreased in the last two years, say? By "relative proportion" I mean relative to the number that have been leased or loaned? A. In the last year I have not had much—in fact I could not make any statement in regard to that, with the exception of one.

Q. In the year prior to that time, as compared with the previous years? A. Let me understand your question again, please.

(Question read.)

A. I think they have increased.

Q. The sales are increasing? A. Yes, because I do not believe they are leasing many of them.

Q. Do you sell oil tanks and pumps to private individuals for their private use? A. I try to.

Q. I am asking you whether you are successful? A. Not very.

Q. You do sell some? A. I have sold some.

Q. To what class of retailers generally do you sell your products? A. As I stated a while ago, to anyone who uses oil in any manner at all.

Q. Those are parties you solicit? A. Yes, sir.

Q. But I am asking rather particularly with reference to your success? A. Paint stores and garages, private garages, groceries who handle kerosene or gasoline, and some factory business.

CROSS-EXAMINATION by Mr. Taber:

Q. Mr. Sheean, you have a contract with the Bowser Company, haven't you? A. Yes, sir.

Q. Does that contract give you the sale of all their product in that territory? A. All with the exception of one order.

Q. What is that? A. That was an order that was taken in Columbus and was shipped into my territory and I got half the commission on it.

Q. But aren't there certain jobbers and dealers that are excluded from your contract? A. Not in my territory.

Q. Not in your territory? A. No, sir.

Q. Did you ever take the matter up with your company that these pumps were being sold and given 434
away or given to the dealers in your territory? A. I might have taken that up with them some time ago; I may have wrote them a letter once.

Q. Do you know that your company is selling these very pumps and tanks that are being leased and given away, or the use of them furnished? A. I don't know a thing about what they are doing with them, other than what I sell.

Q. Don't you know that the Bowser pump is furnished to the dealer upon a lease, the same as any other pump is? A. How do you mean?

Q. Any other make of pumps, that Bowser pumps are being leased— A. I don't know a thing about 435
what they do with them after they get them; a man could buy a pump from me and sell to somebody else, and that man may lease them.

Q. So that your company is getting the benefit of all the tanks and pumps which it sells to refiners and jobbers in the oil business, which the jobber or refiner afterwards leases or loans? A. The company may get that, but the salesman does not. I do not know a thing about what the company does with their end of it.

436 *John S. Sheean, Cross*

Q. Do you know of any commissions that you have lost by reason of these tanks and pumps coming in there? A. I do; yes, sir.

Q. What ones? A. At Xenia, Ohio.

Q. Was that in your territory? A. Yes, sir.

Q. Who was that pump leased to? A. Why, the pump wasn't leased.

Q. What was done with it? A. The situation was simply this: I called on a gentleman at Xenia, and he told me that a man who had previous represented Bowser & Company had called upon him, and he was
437 interested in Bowser equipment, and he gets in touch with the Springfield Oil Products Company and gets them to agree, or he told me he had them agree to put in this pump for him. I go over there to see them, and he comes back and the Springfield Oil Products Company was to sell him the pump outright, and that was the agreement that was made. So when I came back about four or five weeks afterwards, thinking that Bowser equipment would be placed in front of that man's place, another equipment was placed there, but it was made in Dayton, Ohio, and I lost the sale of it through the fact that the Springfield Oil Products Company undertook to give him that pump
438 under certain conditions. That condition was for so much a month, running possibly for two years.

Q. Then they were selling another pump in competition with the Bowser in that case; is that right? A. No, sir; they did not hold up to the agreement, that was made by the Springfield Oil Products Company and the man who was to buy, and the man didn't wait any longer and he goes to Dayton and buys a pump, and had the Springfield Oil Products Company kept out of it, I could have sold the man a Bowser equipment, and I could have had my commission.

Q. Then they did not carry out their agreement to sell that? A. Yes, sir.

439

Q. So your prospective customer went over to Dayton and bought one himself? A. The situation, as I stated a while ago, was the oil company was anxious to get that pump in there and had made a contract with them at a certain figure per month, to run a certain number of months to pay for that outfit.

Q. Now, they did not carry that agreement out? A. No, sir.

Q. That threw the man in Xenia right back where he was before he started? A. Yes, sir.

Q. So he was free to buy then where he pleased, and now is? A. The man in Xenia?

440

Q. Yes. A. Why, sure he could.

Q. And instead of sending word to you that he wanted a Bowser pump he went and bought another make of pump; is that right—the Xenia man? A. The Xenia man bought another make of pump.

Q. And he was under no obligations to the Springfield Products Company at the time that he bought this Dayton pump? A. No.

Q. Do you know how long a time it was after you were there until he bought this other pump? A. No.

Q. How? A. Well, about six weeks.

Q. And you were not in that territory at that time? A. No. When I came back, I found the other pump sticking up.

441

Q. So all the complaint you had is that the commission had gone to the fellow who had sold the Dayton pump? A. He beat me to it.

Q. Is there any other similar case to the one I mentioned? A. No, that was the only one. I thought I would get that out of my system.

Q. You feel better now? A. Yes, sir.

Q. That is the only case now that you know of that you have been beaten out of the sale of a pump? A. I have stated this year.

442 *John S. Sheean, Cross*

Q. Then this year is closed up. Now, let us go back into 1918; is there any one in 1918? A. I cannot recall their names, but there have been a great number of pumps placed or leased for a dollar a year in my territory.

Q. What make of pumps were they? A. I think the majority of them were Gilbert & Barker.

Q. Were there any Bowsers? A. I don't know of any.

Q. You don't know? A. No.

Q. Was there anything peculiar about the way in
443 which these other pumps— A. (Interrupting.) They were handled through an oil company.

Q. Through an oil company? A. Yes, sir.

Q. Where at? A. At Cincinnati.

Q. At Cincinnati, and you do not know anything about the terms under which they were sold? A. Other than what was told me by the people who made those deals.

Q. So you were merely meeting the competition of other people in the same vicinity that were selling pumps? A. I could not meet that competition.

Q. Oh, you could not meet it? A. Oh, no.

Q. So then the fellow that was putting the pumps
444 in was profiting by this deal? A. He may have been profiting in a way by taking the profits from somebody else.

Q. Who was he taking the profits from? A. Why, from the individual salesman that tried to sell the pumps direct to the purchaser.

Q. That is, through taking the commissions from you that you thought you might have had a chance to have gotten? A. I may not have sold him; it might have been some other salesman.

Q. But that is the only party that is hurt in all this transaction, is yourself; is that right; you are the

only loser? A. I don't know whether I would be or not. This other is concerned; there are about 2,000 men at Ft. Wayne depend largely upon what the salesmen send in there for a livelihood.

Q. But the only one directly affected by the sale of these pumps in your territory is yourself, isn't it? A. No, sir.

Q. It is not? A. No, sir.

Q. Now, these other pump companies have agents out, too, don't they? A. I don't know nothing about 446 how they handle it.

Q. You might not have gotten a single one of these orders; isn't that a fact? A. I would have got ninety per cent of them if the oil company stayed off of them.

Q. How do you know? A. Because I was getting them before they come in there.

Q. So you lost these sales? A. Yes.

Q. How many of them? A. Oh, I got tired of counting them, they commenced to come so fast.

Q. You must have had a pretty good number then. How many? A. Oh, I guess they would run—I guess the oil companies put in around sixty or eighty 447 a year.

Q. Now, name the parties that they were put in for? A. That would be impossible for me to do.

Q. Name any of them. A. There is one on Ninth Street, right east of—I guess it was not on Ninth Street; there is one on Liberty Street right near Lynn. I do not know the name of the party.

Q. What is that? A private pump or a garage? A. A public garage; I think it is on Liberty now.

Q. You are not even sure where that is located, are you? A. No, sir.

Q. You cannot name the party? A. No, I haven't got that name.

448 *John S. Sheean, Cross*

Q. Could you name any other? A. I did have a list, that is, I did have the names of them. I do not know whether I could recall them or not, get them correct, but I know—

Q. Now, you say you never took interest enough in this to even report it back to your company? A. I think I did at the time. My daily reports might recall that I failed to sell so and so on account of the conditions that existed.

Q. Can you remember a single instance where you made that report? (No reply.)

449 Q. Not one? (No reply.)

Q. Now, I will ask you whether or not there are more pumps being used under the leasing system and other ways than there were two years ago; has the number of pumps increased? A. In leasing?

Q. Both ways, sales, leasing, and every way; that is, there are more— A. (Interrupting.) I think there are a great deal more sold, that is, the sales have increased greatly.

Q. Your company is selling to refiners and jobbers, isn't it? A. I do not know what they are doing.

Q. You do not know? A. No, sir.

Q. When parties here have testified that they
450 bought Bowser pumps for the purpose of leasing and reselling, the Bowser Company was the recipient of the benefit of that sale, wasn't it? A. Yes, sir; if they sold them under those conditions; yes, sir.

Q. And the only party in that instance that was injured is yourself losing your commission; isn't that right? A. No, there are others, you know, that depend upon my order.

Q. Yes, but if the Bowser Company sold its share of these pumps that have been leased and loaned and resold by refiners and jobbers, then they have not been injured, have they? A. That ain't for me to

451

decide, whether they have been injured; I don't know anything about their business.

Q. I am asking if it is not a fact, if they had their share of the output in, whether there is leasing or loaning or not, then they have not been injured—the company, have they? A. I think they would as their business would not be enhanced by the leasing of those pumps that they would have sold otherwise.

Q. So their business would not be injured, would it, if they have sold them from the factory? A. I don't know whether their business would be injured or not; I am not in a position to know that.

452

Q. Now, supposing there had been no leasing or loaning of these tanks by refiners and jobbers; and the Bowser Pump Company had sold through you and other agents 5,000 pumps and tanks in a year. Now, if they have sold 5,000 tanks through their agents and through the jobbers and refiners, they have not been injured, have they, if they have sold 5,000 in each instance? A. I could not answer that; I don't know anything about that, sir.

Q. Wouldn't the Bowser Company make as much profit perhaps upon 5,000 sold through the agents as they would upon the 5,000 sold through agents, jobbers and refiners? A. I could not answer that.

453

Q. Do you undertake to say that they would not? A. That I don't know.

Q. You don't know? A. No.

Q. Would you say that they had not made as much? A. I couldn't answer that.

Q. You couldn't answer the question? A. No.

Q. Now, assuming that they have made the same amount of profit upon the 5,000 tanks that was sold through agents, jobbers and refiners that they would have made if it had all been sold through their agents; they are not injured, are they? A. I couldn't tell you.

454 *John S. Sheean, Cross*

Q. You could not tell me? A. I could not. I could not answer that at all.

Q. Then if they have made the same amount of money, the only one that is injured is yourself, isn't it? A. I don't know anything at all about the company's profits; I do not know what they are doing over there.

Q. (Question read.) A. I don't know whether they are injured or not; I am not here to answer that.

Q. Assuming that they have made the same amount of profit, then the only party that has been injured
455 is yourself? A. No, sir.

Q. Who else? A. Every man connected with the employment of the Bowser Company.

Q. Every man? A. I should think so.

Q. Every man in the employ of Bowser Company would have had just as much work and would have received the same employment, wouldn't he, in making 5,000 tanks, no matter how they were sold? A. That part of it is beyond me; I don't know nothing about that part of it.

Q. Wouldn't it take just as many men to turn out 5,000 pumps, whether they were sold one way or the other? A. It is according to the disposition of the
456 men, maybe.

Q. The disposition of the men? A. Yes, sir.

Q. Who have you ever made a complaint to about this practice? A. I might have made a complaint to some of the oil companies—might have made a little kick in regard to troubles I was having.

Q. You say you did? A. Possibly I did. I know I did to one.

Q. Who was that? A. Mr. Swango, of the Indian Refinery.

Q. Have you made any complaint to anybody since that date? A. I don't think there was any necessity at all. I got very little satisfaction from him.

Q. Have you made any report to the Federal Trade Commission? A. I didn't know there was such a commission existed until the other day.

Q. You are not informed on the machinery of the government? A. Some of it.

Q. Have you ever filled out any blank report for the government on the sales of pumps? A. No, sir.

Q. Never have? A. No, sir.

CROSS-EXAMINATION by Judge Chamberlin:

Q. Mr. Sheean, did you ever call on the Moore 458
Oil Company to sell pumps and tanks in Cincinnati? A. Why, I called, I think, I guess twenty-five or thirty times.

Q. Did you sell them? A. Yes, sir; I sold them through the inquiries that I got from them.

Q. Inquiries that you got from whom? A. Moore Oil Company.

Q. What was the nature of those inquiries? A. One I sold to a man on Western Avenue, and one I sold to a man on Fourth Street in Newport, Kentucky.

Q. Do you know whether the Moore Oil Company bought their-- A. (Interrupting.) I sold that direct. 459

Q. You sold that direct? A. I got the inquiries from them, and I went over there and closed the matter up.

Q. That is, the customers of the Moore Oil Company? A. Yes, sir.

Q. Did you ever sell the Moore Oil Company? A. I don't know what I did—I don't know but what I did sell them one outfit for their own use. I don't remember whether I did or not. I may have sold them one outfit.

Q. Did you ever sell the Indian Refining Company? A. No, sir.

Q. Did you ever call on them? A. Just once.

Q. Just once; what was the reason you did not call on them further? A. Well, that was the man Swango that I spoke of a few minutes ago.

Q. Did you have a disagreement with him? A. Yes, sir.

Q. That is the reason you did not call on him again? A. Maybe he was a little too big for me; I don't know.

Q. Didn't you consider it your business to call on the refiners and jobbers to sell them goods? A. It
461 looked like if you did you would be tipping off your hand and they would go and get them before you.

Q. They would buy other equipment? A. They would put some other salesman wise to it, and by the time you got back there, it was gone.

Q. I thought you said you had a contract that protected you in this territory? A. I am not talking about Bowser. There are about nine or ten other salesmen that come around there in front of you, or behind you.

Q. You could not compete with them? A. Oh, I could compete with them all right, but the other fellow come around and there was no one to bother him.

462 Q. The reason you called on the Moore Oil Company twenty-five or thirty times was that they gave you these deals? A. Yes, sir.

Q. The Indian Refining did not give you these deals? A. No, sir.

Q. What was the reason you could not meet in competition with the other oil companies? A. I didn't try to meet them in competition; I didn't bother about any competition.

Q. Did the Moore Oil Company or the Indian Refining Company furnish any of these pumps to their distributors on loans or leases for the purpose of dis-

tributing their products to your knowledge? A. Not any that I sold.

Q. Did you ever suggest to anyone in your territory that they could go to a refiner or jobber and secure a Bowser pump on terms of lease or loan? A. I didn't like that kind of business.

Q. Did you do it? A. No.

Q. You did not do it? A. Not to my knowledge did I do that, because it put me in mind of a man selling automobiles, he had to take in another one before he could make the sale of that one.

Q. You expected you would have to take in an old 464
pump? A. No, I had that twice on a job and I didn't like that.

Q. You wanted to sell the first time you went? A. Yes, sir.

Q. Did you ever have any conferences with other salesmen of the Bowser? A. I never bothered my head about what they were doing. I had troubles enough of my own. I always try to keep them from someone else.

Q. You were not always in trouble? A. A salesman usually has a whole lot of trouble. I wouldn't be this gray if it was not for that.

Q. That is not peculiar to Bowser & Company, is 465
it? A. I don't know nothing about the company.

Q. Mr. Sheean, did you notice any difference in the amount of your sales from and after the first of—well, when you first noticed the practice of leasing and loaning? A. I got out of the territory.

Q. What do you mean by that? A. I changed my territory; I took territory north of Hamilton County.

Q. Why did you do that? A. I would run into such competition, I figured.

Q. Did you find the same kind of competition in the territory north of Hamilton County? A. Some

parts of it possibly was. I worked out in the country mostly.

Q. And tried to sell private parties? A. Yes, sir; and garages, paint stores, groceries.

Q. When was that? A. Since the first of the year.

Q. The first of this year? A. Yes, sir.

Q. You worked in Hamilton County you say three or four years after you discovered that they were loaning and leasing? A. Well, I had to; I couldn't do any different.

Q. How did your sales compare year by year dur-
467 ing those three or four years that you worked under those conditions? A. I was looking over—anticipating every month that I would have a blue ticket in the envelope.

Q. You are not answering my question. A. They fell off.

Q. You sold less and less, did you? A. Yes, sir.

Q. Can you state about what the ratio of decrease was? A. Well, I suppose about 33 1/3 per cent.

Q. Now, why do you say you suppose that; are you speaking as a guess or from your records? A. Well, I do not recall just exactly how much business I done prior to that, but I knew my commissions were
468 much less.

Q. That would be in the year 1916, wouldn't it, three years ago? A. Yes, sir; 1916, 1917 and 1918.

Q. Now, how were your commissions in 1917 compared with 1916? A. They were about the same.

Q. Fell off 33 1/3 per cent again? A. No, just about equal.

Mr. Taber: About the same each year?

Q. About the same percentage fell off?

Mr. Taber: No, the same sales.

469

Q. The sales were about the same in 1917 as they were in 1916? A. Yes.

Q. Then you didn't lose anything in 1917? A. No, but I lost in 1915 and 1916, around that; I don't know whether it was that year or not; around about that time.

Q. You said in your direct-examination three or four years ago. A. Yes, sir.

Q. Now, in 1918, how did they compare with 1917? A. About the same.

Q. What do you mean by that? The commissions were about the same in 1918 as they were in 1917; 470
is that what you mean? A. Yes.

Q. So that you only lost 33 1/3 per cent of the sales of 1915? A. Yes, sir.

Q. How did the sales compare in 1915 with 1914? A. I think I done better in 1915 than I did in 1914.

Q. How much? 33 1/3 per cent? A. Oh, no.

Q. How much? A. It might have run about 15 per cent.

Q. Then your sales in 1917 and 1918 were about ten per cent less than your sales in 1914? A. No, they were about one-third, I guess.

Q. They were about one-third what they were in 1914? I do not follow your arithmetic, Mr. Sheean. 471
A. I told you I gained between 1914 and 1915, or 1915 and 1916, about ten per cent, didn't I?

Q. I don't think you said that.

(Record read.)

A. I said that the sales between 1915 and 1916 —I had a gain of about ten or fifteen per cent, and a loss in the next three years that equalized through the year. I didn't say each year 33 1/3 per cent, but they fell off about one-third.

Q. You say the first of this year you changed your territory, the first of 1919? A. Yes.

472 *John S. Sheean, Cross*

Q. How did your commissions compare during 1919 with 1918? A. I guess I made as much money from the first of the year up until July as I made all last year.

Q. Was that by reason of your calling on more customers, having a larger territory? A. No, it was for the reason that the method of handling the business was not as keen up there in that territory as it was in Hamilton County.

Q. Competition not as keen; you had new customers? A. A different class of customers to call on,
473 too.

Q. Would you refuse to sell a jobber or a refiner pumps and tanks if you knew he was going to loan them? A. How?

Q. Would you refuse to sell in your territory a jobber or refiner if you knew he was going to loan those pumps? A. I would sell him anything. It wouldn't make any difference to me. In the first place I would not ask him what he was going to do with them, and I would not want him to tell me what he was.

Q. If he did tell you, you would not refuse to do it? A. No, sir, if he told me he was going to re-
474 sell, I would have to refuse him.

Q. Would you refuse a jobber or a dealer— A. (Interrupting.) According to my contract.

Q. That is, your contract restricts you to sell to users of the tanks? A. That is, those who are going to resell them—

Q. (Interposing.) You are not permitted under your contract to sell? A. In other words, I could not hire an agent.

Q. Let me understand you clearly; could you sell to a jobber if you knew he was going to resell those pumps? A. No, sir.

475

Q. You are restricted by the terms of your contract? A. Yes, sir.

Q. Under the terms of your contract would you get any credit for sales that arose in your territory, or, in other words, that come from your territory? A. How?

Q. Would you get any credit or commission for sales that arose in your territory not through your solicitation or your writing the order? A. If a man —in other words, if you would write into the house and ask them to ship you a tank and pump.

476

Q. Yes. A. I would be credited with the commission.

Q. But in case a jobber did that, you would get no credit? A. I would get credit for anything that was sold in my territory.

Q. If the jobber bought and sold in your territory— A. (Interrupting.) There would not be any jobber because Bowser & Company have no jobbers.

Q. They sell to those who resell, do they not? A. How?

Q. Don't they sell their pumps and tanks to those that resell? A. In my territory my contract says I am the sole salesman in that territory; any pump sold coming into my territory I get the commission on.

477

Q. And the Bowser Company refuses to sell to the jobber in your territory? A. Before they would sell to a man who would inquire for an outfit they would send that inquiry to me, and then I would go and see that party.

Q. Now, let us get it a little more concretely; supposing that the Brown Oil Company or some other oil company located at Hamilton—that is in your territory, is it not? A. Yes, sir.

Q. (Continuing.) Should write into the house and ask if it could place an order with them for five tanks? A. Yes, sir.

Q. Well, now, would you go to that Brown Oil Company and endeavor to secure an order from them for those five tanks? A Yes, sir.

Q. Would you do that if you knew that they were going to sell those tanks again to some distributor? A. According to my contract I am not allowed to sell anyone anything, any tank or pump, who would resell it.

479 Q. Mr. Sheean, do you sell on commission? A. Yes, sir.

Q. Entirely on commission? A. Yes, sir.

Q. Pay your own expenses? A. Yes, sir.

Q. What do these outfits sell at? I suppose there are different prices for different kinds? A. Yes.

Q. But I mean the regular five-gallon outfit? A. I would have to have my price book here to give you the price of it. I never made it a practice to try to memorize prices. I made a mistake one time and it cost me about $50.00.

Q. You sell at the regular printed list prices? A. Yes, sir.

480 Q. What commission do you get? A. It varies.

Q. How does it vary? A. According to the outfit you sell.

Q. Take this five-gallon pump, what commission do you get on it? A. Some—I couldn't very well tell you just exactly what commission, but they range about sixteen or eighteen per cent up to about thirty-three.

Q. Thirty-three per cent? A. But that—there is about twenty-five different outfits in there, you know, and I couldn't tell you just exactly. If I had my price book, I could give you the whole information, just like I do to a customer.

Q. As a salesman you are tolerably familiar with the articles that you sell, are you not? A. Yes, sir.

Q. Do you have in mind this five-gallon pump and tank that is used by the garages generally? A. Yes, sir.

Q. Now, with reference to that what do you get? A. I can't tell just exactly. I was just trying to think of the amount that I get on a certain amount sold.

Q. Just as near as can be; is it ten or fifteen or twenty? A. It will run about twenty-two per cent on those five-gallon pumps. 482

Q. About twenty-two per cent. Now, if you were to sell those in wholesale lots to a dealer, would you get a different per cent; for instance, if you sold a lot of ten pumps? A. We would give the trade discount then.

Q. Would that trade discount come out of your commission? A. Part of it.

Q. Part of it; so there would be a difference between the percentage of profit that you would get in selling to a wholesale dealer or to the consumer? A. If you would be selling ten outfits, where it would take three weeks to sell one outfit to some other individual. 483

Q. Would you favor the Commission, the Federal Trade Commission, in issuing a cease and desist order; would you be in favor of having the Commission issuing a cease and desist order from loaning or leasing these pumps? A. Well, for my own individual benefit, see? It would be hard for me not to. It would be better for me if they never put them out that way at all.

Q. So you would be in favor of it? A. Yes, sir.

Q. And against these oil companies; even if that restricted the number of pumps that would be re-

quired to serve the public? A. I do not think it would restrict it.

Q. Upon what basis do you say that? A. I think there would be just as many and possibly more, because a salesman would have a better advantage to go around and get that many more stockholders. He could work that much harder. It is an awful incentive for a man to work you know, if a man has an order in his pocket.

Q. It is an awful incentive for him to go to work and get another one? A. He will go after the sec-
485 ond one better if he had one started.

Q. In your opinion would a cease and desist order which forbade the refiners and jobbers from buying for the purpose of leasing and loaning Bowser pumps have a bad effect upon your company, upon the Bowser Company? A. I don't know.

Q. In other words, you do not know much of anything about any of these conditions except as they figure up in commissions? A. To me, yes, sir.

Q. Did you ever have any experience in soliciting orders where you found that the credit of the party was not such as the house would recommend—or rather would not recognize sufficient to consummate
486 the sale? A. I never bother with that. They tend to that over there for us. They won't ship them if it is not good.

Q. Where you have solicited the sale of Bowser pumps and the order was refused on account of the credit of the party, have you ever known of pumps being secured by those parties and put into operation? A. No, I never have.

Q. You never have? A. No.

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CROSS-EXAMINATION by Mr. Myers:

Q. Mr. Sheean, suppose that instead of the oil companies leasing and loaning these pump outfits, they would make these different retailers their agents and install a pump in there and have them sell the gasoline as agents of the oil companies, would that make any difference in your business as under the present conditions? A. I don't know.

Q. What do you think about it? A. I don't know what effect that would have; I cannot answer that.

488

Q. You cannot answer that question? A. No, sir.

Q. Now, as a matter of fact, Mr. Sheean, if these people who are now loaning or leasing pumps from oil companies were the agents of these oil companies, you could not sell them the pump, could you, if they had a pump already as an agent of an oil company? A. I do not know whether I could or not.

Q. What would be the reason for their buying a pump of you when they already had one installed as an agent?

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Mr. Zechiel: What would be the reason for their buying a pump? I do not want to be technical about this proceeding at all, because it ought to be open and free. I think the witness has admitted himself ignorant along that line, and I believe it is forcing the witness into a line about which he knows nothing, unnecessarily so.

Mr. Myers: That is a fact here that ought to be admitted. It is a self-evident fact.

Mr. Zechiel: If that is so, if it is a self-evident fact, then it ought not to be gone into.

490 Mr. Myers: Are you willing to put that in the record as a stipulation, that the fact of an agency would not materially change the condition as it already exists in regard to the sale of pumps?

Mr. Zechiel: Why should you insist upon the stipulation of a self-evident fact? I do not think it is self-evident, but you do, and that is all there is to it.

Mr. Myers: Let us have then what this witness says.

Mr. Zechiel: This witness admits he is ignorant on that line. He would not and
491 he has not answered questions that would show himself qualified. He has not been examined on that line.

Mr. Myers: We are not limited by that.

Mr. Zechiel: I think the effect of this is to examine this witness on a line on which he is not qualified and on a line which is not relevant to the investigation.

Mr. Myers: This witness qualifies himself as a pump salesman as being familiar with conditions in that territory for the last seven or eight years, with regard to conditions in his territory.

492 Mr. Zechiel: Is there any evidence that he is familiar with that kind of a situation?

Mr. Myers: Probably not, but he can say so.

Mr. Zechiel: There is no evidence of that kind; so far there is no evidence of that kind.

Examiner McCorkle: Permit the gentleman to ask the question. You have the right to question his knowledge and his ability, and so forth. That goes to the question of his qualifications. Of course, gentlemen, we want to shorten his testimony as much as possible. You may proceed.

(Question read.)

The Witness: That reason ought to be self-evident enough to him without asking the question.

Mr. Zechiel: Just answer the question, if you know.

The Witness: Because the pump is already there. What does he want another one for?

Mr. Zechiel: Just a minute; Mr. Examiner, let us have the witness's answer to the question, not his argument with counsel.

Examiner McCorkle: Answer the question, Mr. Sheean, as well as you can without asking the counsel a question. 494

The Witness: I cannot tell what is in the minds of the man who is doing that business, whether he wants to buy a pump or whether he does not want to buy a pump until I get on the ground to try to sell him one.

Q. Then if he has already a pump, he does not want to buy one, does he? A. Not from me.

Q. Then the proposition rests upon the same basis as it is today, if a man already has a pump, it don't make any difference whether he is an agent or whether he has one leased? A. I don't know anything about that part of it.

Q. What do you think about it? (No reply.) 495

Q. Answer my question. What do you think about it?

Mr. Zechiel: Mr. Examiner, I insist that the witness has answered the question.

Examiner McCorkle: I guess he has answered. He says he does not know anything about it. That is a pretty good answer, a pretty full answer.

Q. You said a while ago that the fact of leasing and loaning of oil pumps was demoralizing to the salesman, didn't you? A. Yes, sir.

Q. Wouldn't it be demoralizing to a salesman if the customer had already a pump as an agent of an oil company? A. I never call on a man who has already got a pump. I am calling on the man who has not got a pump.

Q. Take the man who has not got a pump and you call on him, and he finds out that he can get a pump by becoming an agent of an oil company, would that make any difference as to whether you would be able to sell him? A. I would try to sell the man; if I could not sell him, I would go away.

497 Q. The fact is, you could not sell him if he could get a pump for nothing, could you? A. A man would be foolish; the whole world over, we are all grabbing for something for nothing.

CROSS-EXAMINATION by Mr. Holliday:

Q. Did I understand you to say that there were no pumps in Cincinnati? A. I don't know anything about that; I couldn't answer you that.

Q. You would not say that there were not? A. I don't know a thing about it.

Q. Were you the representative of the Bowser
498 Company in Cincinnati in the years 1913, '14 and '15? A. Yes, sir.

Q. And you were agent for the Bowser Company up to the first of this year in Cincinnati? A. Yes, sir.

Q. And yet you say that you do not know whether any Bowser pumps were leased during that time in Cincinnati? A. There might be.

Q. Don't you know, as a matter of fact, that the first twelve outfits that were leased in Cincinnati were Bowser outfits? A. I don't know it, sir.

Q. You would not say that that was not true? A.

No, I would not say it was not true; I say, I don't know it.

Q. Was there anybody else representing the Bowser Company in Cincinnati during that time? A. Yes, sir.

Q. Who was it? A. There was Mr. Stearn, Mr. Woods and Mr. Mann; I think Mr. Mann had charge of the office there at one time. I worked under him. Then Mr. Woods came there after Mr. Mann, I think, and Mr. Mann and Mr—Mr. Wood, and then Mr. Stearns, H. S. Stearns.

Q. As a matter of fact, hasn't it been your custom 500
in endeavoring to sell Bowser pumps to go and pick out what you think is a good location for a pump, and then go and get an oil company to lease that man a pump and buy the pump from you? A. I never made that practice.

Q. You never have done that? A. No, sir

Q. Would you say that the agents of the Bowser Pump Company that you have known in that territory have not done that? A. They might have done it.

Q. Have you made representations to prospective purchasers of your pumps that if they would buy one of your pumps, they would get a good pump, and 501
then an oil company would come and buy it for them and lease it to them; has that been one of your sales policies? A. I don't know whether I ever made that statement in my life.

Q. Would you say that you did not? A. I would not say that I did not.

Q. As a matter of fact the oil companies in Cincinnati and Hamilton County and in your territory, the wholesale companies, have bought large quantities of Bowser pumps, have they not? A. I never sold them to them.

502 *John S. Sheean, Re-direct*

Q. Well, you do not mean to testify then that the Bowser Pump Company has not sold large quantities of pumps to the wholesalers of gasoline? A. I know Mr. Wood has sold to the Moore Oil Company, I suppose very nearly all their pumps that they use in their stations.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Mr. Sheean, at the time you tried to sell oil tanks and pumps to customers who would not buy,
503 do I understand that you testified on cross-examination that these prospective customers told you that their reason for not buying was that they could lease and loan from an oil company or somebody else engaged in the pump business? A. I have had two or three of them say that to me; I do not recall their names; it has been some time ago.

Q. Now, you testified on cross-examination that recently, in the last year, your business had increased in your territory in the sale of Bowser equipments? A. That is on account of moving from one territory to another.

Q. What was the difference between the competi-
504 tion in the two territories? A. Well, the competition was pretty keen in one of them, in the first one.

Q. What do you mean was keen; do you mean the competition between the lessees, those that sold pumps and yourself? A. The competition between the pump makers and conditions that existed there.

Q. By "conditions that existed" are you referring to leasing and loaning of pumps? A. Yes, sir, part of it.

Q. In the new field, what is the fact about competition there? A. I experienced but very little competition in regard to the—

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Q. (Interposing.) Do they lease and loan pumps in your new field? A. I haven't run across many of them; they were possibly leased and loaned before I got there and I knew nothing of it.

Q. But you are selling pumps in that territory? A. Yes, sir.

Q. With respect to the possible order of the Commission against oil companies to cease and desist leasing and loaning oil tanks and pumps, from your experience in the sale and distribution of these outfits, do you think that the oil business will be compelled to sell its product through the service stations, the big service stations owned by the companies, and that there will be a decrease in the sale of pumps and tanks to individual parties? A. I do not think there will.

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Mr. Holliday: I do not know that there are any rules of examination, but I submit that this gentleman has not qualified himself as an expert in the oil business.

Mr. Zechiel: I will withdraw the question.

Q. From your experience in the sale and distribution of oil tanks and pumps, will the possible effect of an order to cease and desist result in a decrease in the sale of oil tanks and pumps to garages and other vendors of gasoline products? A. I think it would help a whole lot.

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Q. Do you mean that the sales would be greater or less? A. They would be greater.

Q. If the Standard Oil Company of Ohio were leasing and loaning oil tanks and pumps manufactured by Gilbert and Barker Company of Springfield, Massachusetts, would you consider it good business to induce either the Standard Oil Company or independent companies to enter into the same kind of

competition and buy pumps from you? A. It is pretty hard for me to put myself in the position of somebody else.

Q. Let me amend the question—"where the competition is in the field where you are engaged in selling and distributing pump and tanks." A. It would be much better for me if there wasn't any pumps put into the market at all other than those that were sold by the manufacturers.

Q. The various manufacturers? A. The various manufacturers.

509 Q. But if there were pumps put on the market through the process of leasing and loaning, and those pumps were the pumps of a competitor, would you consider it good business for your company to enter into the same kind of business, of selling pumps to independent oil companies who would lease and loan? A. I could not answer that question.

J. E. SMITH was thereupon called as a witness, and being duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

510 Q. What is your name and address? A. J. E. Smith, Washington C. H., Ohio.

Q. What is your business, Mr. Smith? A. Oil business.

Q. Are you connected with an oil company? A. I have a company of my own.

Q. What is the name of your company? A. The J. E. Smith Oil Company.

Q. Where do you operate? A. In Washington Court House.

Q. Ohio? A. Ohio.

Q. Do you operate in that territory in and about Washington Court House also? A. I get out about sixteen or eighteen miles.

Q. In connection with your business, do you make a practice of selling or leasing and loaning your oil tanks and pumps? A. Of selling pumps.

Q. Do you lease or loan such pumps? A. No, sir.

Q. Have you ever lost any customers because you would not lease or loan such pumps? A. Well, I don't know. I have turned down some propositions, but that is about all I know about that. I might have got them if I had. 512

Q. Do you mean that requsests have been made of you to lease and loan— A. (Interrupting.) Yes, sir.

Q. Pumps, and you refused to do so? A. Yes, sir.

Q. Did those customers install pumps after that? A. Yes, sir.

Q. Were you ever able to sell them any gasoline? A. Oh, nothing of any amount. I have sold them a little stuff but not into their tank.

Q. Well, you sold very little gasoline to these particular parties? A. Yes, sir.

Q. Do you know whether these parties did secure an oil tank and pump outfit from a competing oil company under leased contracts? A. I do not. 513

Q. You don't know whether they did or not? A. I do not.

No cross-examination.

514 *T. C. Potts, Direct*

T. C. POTTS was thereupon called as a witness, and being duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your address, Mr. Potts? A. Cleveland, Ohio, 1836 Euclid Avenue.

Q. What is your business? A. Sales representative, S. F. Bowser Company.

Q. As sales representative, do you have charge of a particular field or territory? A. Yes, sir.

Q. What is the territory allotted to you? A. The
515 Counties of Cuyahoga, Lake and Lorain.

Q. Generally, in and around what place? A. Cleveland.

Q. How long have you been connected with the Bowser Company? A. Twelve years.

Q. During that time have you always been salesman in some branch or other? A. Yes, sir.

Q. Over what territory has your employment extended? A. The territory I have just mentioned.

Q. You have always been in the Cleveland territory? A. Yes, sir.

Q. How do you conduct your sales business, generally, in your territory? A. By solicitation, largely.

516 Q. And what class of people do you solicit? A. All branches who are nominally interested in our equipment.

Q. No particular class—garages? A. Garages, factories, oil companies, dry cleaners, etc.

Q. Where you make sales of Bowser products how are such orders or sales filled? A. The orders are taken by us individually and forwarded to our home office and filled from that point.

Q. Where is your home office? A. Ft. Wayne, Indiana.

Q. And the pumps and tanks that you sell are

shipped from Ft. Wayne? A. Shipped from Ft. Wayne to the customer.

Q. Direct to the customer? A. Direct to the customer.

Q. In your experience in connection have you ever solicited or tried to sell to oil dealers, retailers or other parties who have refused to buy, stating as their reason that they were able to secure such equipments by lease or loan from competitors or oil companies who handle gasoline pumps and equipments? A. I have.

Q. How many such instances do you recall in a 518
general way? A. Oh, I should say a great number.

Q. It has been a difficulty that you have met in your experience in selling your tanks and pumps? A. Yes, sir, it has been.

Q. Has that been true generally throughout the territory over which you have jurisdiction? A. It has.

Q. What is the relative, either increase or decrease, in the sale of gasoline pumps during the periods from 1912 and 1913 on down to date? A. I don't just understand your question.

Q. Read it please. 519

(Question read.)

A. I think we can show a corresponding increase each year in our territory.

Q. That is, you mean to say each year from 1912? A. Yes, sir.

Q. Down to the present, you have had a gradual increase in the sales? A. Yes, sir.

Q. Of oil tanks and pumps? A. Yes, sir.

Q. Now, if you were to divide that business generally and speak with reference to sales to garage

men and other retailers of gasoline, what would be your answer? A. You mean to qualify it with reference to what we have sold to oil companies and what we have sold to—

Q. (Interrupting.) Yes, I mean to classify it with respect to this, the oil trade and the dry cleaners' trade; put those in one group and then the garage business or retailers of gasoline business in one group, and speaking with respect to the latter group, what would you say as to the per cent of increase or decrease in the sales since 1912? A. Well, I should
521 say that the percentage of sales to oil companies has been larger with each succeeding year since 1912.

Q. Let the answer stand if there is no objection, but it is not the thing I wanted you to answer—with respect to the garage business, retailers of gasoline, not wholesalers of gasoline, but with respect to retailers of gasoline; what is the situation? A. I would say that that has probably shown a gradual decrease particularly during the past five years.

Q. During the past five years? A. Yes, sir.

Q. How much of a decrease in actual number of sales has there been from that period of, say 1914, down to the present time? A. I wouldn't know how
522 to arrive at an intelligent answer to that question without my records before me.

Q. Let me just ask one more question along that line. Will you say that you are now selling half as many oil pumps and tanks to retailers of gasoline as you did in 1914? A. I think we are, yes, sir.

Q. Are you selling more than half as many? A. I would say that that was a fair estimate.

Q. Are these sales made as replacement sales or as new sales? A. Both.

Q. How are they divided, if you can make a fair estimate? A. Well, I should say seventy-five per

cent are new sales and the balance are replacements.

Q. About what per cent of the retailers of gasoline in your territory own their own equipments, if you know? A. Probably fifty per cent.

Q. What has been your experience with the remaining per cent; that sales could have been made —this is in your judgment—that sales could have been made to the remaining per cent if there had been no lease or loan of oil tanks and pumps by oil companies? A. It could have been made to some of them.

Q. About what per cent do you think sales could 524
have been made in your experience, I mean what per cent of the fifty per cent? A. Well, personally, I should say fifty per cent of the fifty per cent.

Q. If you know, of the remaining twenty-five per cent have such installations been permanent or have they been installations which have lasted a short time and then been removed? A. They haven't been permanent. That has been my observation, largely.

Q. Would you say that that is true largely of the remaining twenty-five per cent? A. Quite so.

CROSS-EXAMINATION by Mr. Myers:

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Q. Mr. Potts, you say that fifty per cent of the people in your territory own their own pumps? A. I would say that number would be a fair estimate.

Q. And that if the oil companies hadn't loaned or leased, twenty-five per cent of those people would have purchased pumps from you or some other pump salesman? A. That is my opinion.

Q. Then the other twenty-five per cent of the pumps that have been sold in your territory would not have been sold at all? A. Well, I don't know as to that.

526 *J. O. McCracken, Direct*

Q. Isn't that a fair deduction from your testimony, that if fifty per cent did own them and you could have sold, or some other pump representative could have sold twenty-five per cent, then the twenty-five per cent remaining could not have been sold to anybody; they would not have been sold unless they had been leased or loaned, isn't that what you mean by your testimony? A. I think a market was created perhaps for this other twenty-five per cent that we could not create a sale for.

527 Q. As a matter of fact the pump companies, the manufacturers of pumps, have benefited by the oil companies loaning and leasing these pumps? A. In my opinion they have, yes, sir.

J. O. McCRACKEN was thereupon called as a witness, being duly sworn, testified as follows:

Direct-examination, by Mr. Zechiel:

Q. You may state your name and your address? A. J. O. McCracken, 128 East Gay Street, Columbus, Ohio.

528 Q. With what company are you engaged? A. S. F. Bowser & Company, Ft. Wayne, Indiana.

Q. How long have you been employed by that company? A. About thirteen years.

Q. During that time you have been employed in what territory? A. Well, I was in Philadelphia about five years.

Q. How much of that time have you spent in the State of Ohio? A. About six and a half years; it will be seven years in January.

Q. In what part of Ohio have you spent those six and a half years? A. Just around Columbus.

Q. What is your general method of doing business for the Bowser concern? A. Well, we sell to all the different lines, dry cleaning, garage, oil companies, part of them, to the paint man and factory.

Q. During your experience with the S. F. Bowser Company in the sale and distribution of oil tanks and pumps have you ever solicited prospective customers who refused to buy your equipments because competitors of oil companies leased or loaned such equipments? A. I have, yes, sir.

Q. Has that been your—has that experience been common to your experience as a salesman with the 530
Bowser Company? A. Quite a number.

Q. What is the territorial extent of your employment? A. I virtually have seven counties outside of Franklin County.

Q. In and about Columbus? A. Yes, sir, all right around Columbus, all surrounding Columbus.

Q. Has this experience been uniform throughout that territory? A. Well, yes, you might say it has. Some parts of course are not so much so as others.

Q. In your experience what has been the fact about the sale and distribution of pumps and equipments from your company as to the relative increase or decrease in such sales from 1912, we will say, down 531
to the present time? A. Well, take 1913, because in 1912 I wasn't with the company.

Q. 1913. A. My business has increased every year since that.

Q. Would you be willing to make an estimate, or could you make an estimate as to the approximate per cent of increase in your business? A. 1914 was lightest, I think, caused by the war breaking out. I imagine so. But since then my business has been increasing. It has increased some each year.

532 *J. O. McCracken, Direct*

Q. Could you fix the approximate percentage? A. Oh, I guess probably a thousand dollars a year.

Q. On how much business? A. Is it necessary for me to tell how much it is? I prefer not.

Q. I don't care whether you put it in money. I thought you would limit it to percentage if you can fix the approximate percentage. A. It is a ten per cent increase.

Q. A gradual increase? A. A gradual increase since 1914.

Q. A gradual increase of 10 per cent each year
533 over the preceding year; now confining yourself to the sale and distribution of oil pumps and tanks to garage men and other retailers of gasoline, what would your answer be with respect to the percentage of increase or decrease since 1914? A. Well, the garage business has not increased as much as some other lines, I think from the fact that after we sell a garage once, why there isn't very much chance to sell him again on account of the equipment lasting, comparatively speaking, a lifetime, and there are not as many garages being built now as there were, I don't think—in comparison—as there were four or five years ago.

Q. Do you think that your per cent has increased
534 or decreased? A. I think my per cent has increased to a certain extent.

Q. So that today you are selling as many people who retail gasoline, or more people today who retail gasoline, than you did in 1914 and 1915? A. Well, very nearly as many; I don't see much difference.

Q. Now, have those sales been new sales or replacements? A. Well, mostly new sales. The only replacements we have are where a person who has a gallon pump—that is, as a general thing—wants a larger equipment, a five-gallon pump, or a two-gallon pump. We sell a great many larger pumps where five years ago we didn't make five gallon.

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Q. Considering that as a sale instead of a replacement, about what per cent are new sales and what—A. (Interrupting.) Do you consider that replacement a new business?

Q. I say, considering that as a new sale, what per cent then would you say are new sales, of this garage and other retail business? A. You mean just the garage?

Q. Yes, garage and other retail business. A. I don't know how to answer that because the most of the sales to the garages would be replacements, you know—the older garages.

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Q. Are you referring to changing a small pump to a large one? A. I am referring to changing a small pump to a large one, or a small tank to a large one.

Q. Considering that as new sales rather than replacements. A. That is the majority of our business—that and the new sales would be the greater majority of our business. Do I understand you right? That would be most of our business—the resales and the new business.

Q. About how many pumps and tanks do you sell to garages and other retailers of gasoline in your territory per year? A. That is pretty hard to answer. I think my sales—

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Q. By sales, I am including now the replacement by larger pumps for smaller. A. I cannot hardly tell you. I go by number, of course. My sales are all numbered but if I sell a ten-foot hose it has a number the same as a ten-barrel outfit and it would be very hard, without going over my books. I could tell that way; I could give you an estimate.

Q. Could you make an estimate that you think would be a fair estimate as to the number of sales of oil tanks and pumps per year? A. I would hate to say. Of course I hadn't figured that out at all. My

sales—my number of sales were I think in the neighborhood of 300, 250 to 300. That is numbers, but lots of those numbers are only for a ten-foot length of hose and maybe a nozzle. I presume out of that a hundred pumps.

Q. Equipments? A. Yes, sir, a hundred. That may be off but I am giving it as near as I can, to be honest about it.

Q. In your experience, about what per cent of the pump equipments used by retailers of gasoline are privately owned and what per cent are leased or
539 loaned? A. You mean in my entire territory?

Q. Yes, in your territory. A. Of course, you will find, I think, in the country more of them own their own equipment than they do in the larger cities. Of course, I think the majority of garages and also the stores through the country own their own equipment, but, of course, in the city, a few years ago, there used to be quite a number that were leased out, but now I don't think there is very many of them in Columbus.

Q. You mean that are leased and loaned? A. I don't think there is very many. I think a great many of them have been dug up.

Q. So that it would be your best judgment that the
540 greater per cent of pumps and tanks in your territory are now privately owned? A. I would imagine so, at least 60 per cent.

CROSS-EXAMINATION by Mr. Lippincott:

Q. How many salesmen have the Bowser Company, if you know? A. About 450.

Q. Do they frequently get together at the home office, or in groups? A. About once a year.

Q. Have you attended those meetings? A. We have had no—we have a club called the Pacemakers

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that all who are founate enough to get into that have a convention once a year, but we haven't had those conventions for three years on account of the war.

Q. Now, do you meet frequently these salesmen and have a talk with them? A. Why, not very often. When I go into the factory, and I go in four or five times a year, there are always a few salesmen there.

Q. As you go to the factory do you keep in touch, to some extent at least, with the increase or decrease of the business in general? A. I do.

Q. Can you give us some idea as to whether Bowser & Company are increasing their volume of sales or de- 542
creasing them? I don't ask you for figures unless you want to give them. A. I am not going to give the amount of business. I know, but I am not going to give it. That is, I don't think it is necessary, but the increase in the business in 1918 over 1917 I think was about a million dollars.

Q. In 1917 did they have an increase over 1916? A. I think they increase every year.

Q. Every year? A. They aim so.

Q. Now, as you meet the salesman from time to time whether at the home office or other places, are sales increasing, do you know? A. Salesmen are salesmen. They always say they do whether they do 543
or not. Of course, this year you know our sales won't be anything like they were last year.

Q. That is on account of your strike? A. Yes, that is on account of our strike.

Q. It lasted from last February until about this time? A. Lasted from May to September.

CROSS-EXAMINATION by Mr. Myers:

Q. You do business around Springfield, don't you? A. No, that is out of my territory.

Q. What territory have you? A. Do you want me to give you the counties?

Q. Yes. A. I have Marion, Morrow, Madison, Union, and I had, up to the 15th of September, Fayette and Fairfield, but now they have been taken to another man and I have Madison and Licking and Franklin.

Q. Now, your experience has been in these counties that the leasing of oil tanks and pumps—that is, that the companies here are not doing that as much as they were before? A. Well, I don't pay very much atten-
545 tion to that. I don't think they are—I haven't come in contact with them much. They haven't bothered me any.

Q. Did you ever come in contact with any of the companies that were appointing agents—selling their gasoline that way? A. I don't know how you mean just exactly.

Q. Well, that is a grocery, for instance, instead of having a pump leased or loaned, he became an agent of some oil company and sold that oil or gasoline on a commission rather than on a— A. No, I have never come in contact with any that way.

546 *CROSS-EXAMINATION by Mr. Westfall:*

Q. Have you sold pumps to oil companies, Mr. McCracken? A. Yes, sir.

Q. You are not forbidden by the terms of your contract from selling to oil companies? A. No, sir, I sell to the oil companies. The oil companies have a contract where they sell a certain number of outfits the same as a private individual would have.

Q. When you make a sale of a pump to an oil company, do you include what disposition they are going to make of it? A. No, sir.

Q. How are they going to dispose of it? A. No, sir.

Q. It doesn't make any difference to you whether they lease or loan it or sell it, so long as you get paid for it? A. No, sir.

CROSS-EXAMINATION by Judge Chamberlin:

Q. Mr. McCracken, you stated in your direct-examination that you had failed to secure some sales where the parties had leased pumps, did you not? A. I don't 548
think so.

Q. Didn't you say that in your direct-examination? A. Did I? I don't think so.

Q. If you did say that, it was an error, was it? A. Now, wait until—I want to understand that thoroughly. I think I said that there were places where they have leased outfits but I don't—where a man has got a pump, I don't bother him. I don't go into details. That is not my business, but I don't think I have lost any sales. I don't think you will find that in my answers.

Q. It was my impression that you said that. A. I think somebody else did, but I didn't. I don't think I have lost any sales that way; I may have, but if a man 549
has got a pump I go and hunt somebody else.

Q. And the result is the same, whether he has leased it or bought it? A. If he has a pump my instructions are to say nothing to him. I hunt up a new prospect.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Would you consider it good business practice for you and the concern which you represent to sell pumps manufactured by your company to independent oil companies for redistribution by lease and loan,

550 *J. O. McCracken, Re-direct*

provided in the same territory, in the same competitive territory the Standard Oil Company of Ohio, for instance, were at that time and had been prior thereto engaged in leasing and loaning oil tanks and pumps of the Gilbert & Barker Manufacturing Company, of Springfield, Mass.?

Mr. Taber: I don't get the drift of that question.

(Question read.)

The Witness: I don't hardly know how to answer
551 that, but as far as the company is concerned, I don't know, but if I was selling to an oil company I would probably sell them six or eight, where I would probably sell one to an individual, and I would be perfectly satisfied if I was making the number of sales. I would would probably sell more to them, if I sold to an oil company, than I would if I sold to an individual, but I know nothing about what the company are standing on. Of course, I have never been consulted. I hope that is plain?

Q. And if there were in your competitive field pumps that were being manufactured by competing manufacturers and you could sell your pumps to an
552 independent oil company or some other oil company than that company handling your competitor's pumps, you would consider it good practice? A. I would sell my pumps, yes, sir, all I could.

Whereupon, at 5:00 o'clock P. M., an adjournment was taken until 10:00 A. M. Thursday, October 29, 1919.

OTHO F. MIKESELL was thereupon called as a witness, and being duly sworn, testified as follows:

Direct-examinaiton by Mr. Zechiel:

Q. What is your full name? A. Otho F. Mikesell.
Q. Where do you live? A. Lima, Ohio.

Mr. Zechiel: Do you want the street number, Mr. Examiner?

Examiner McCorkle: Yes.

The Witness: 116 North McDonald.

Q. With what concern are you associated? A. At 554
the present time?

Q. Yes, at the present time. A. Lily White Oil Company.

Q. How long have you been with that company? A. About 60 or 90 days.

Q. With what company were you associated prior to that time? A. The Carbonless Oil Company and the White Star Oil Company.

Q. With both of them, you mean? A. Yes, in my time, in business.

Q. I mean prior to your association with the present company, the Lily White Oil Company? A. With the Carbonless Company. 555

Q. What was your position with the Carbonless Company? A. I was manager, general manager.

Q. Is that the Carbonless Oil Company of Akron, Ohio, that is one of the respondents in this proceeding? A. No, Kenton.

Q. Your home is at Akron? A. No, Lima. I lived at Kenton when operating the Carbonless Oil Company.

Mr. Lippincott: I think you will remember that the Carbonless Oil Company is out of existence.

The Witness: I might state that the two companies have consolidated.

Q. What two companies are you speaking of? A. The Lily White and the Carbonless.

Q. Are you acquainted with the transaction, the consolidation of those two companies? A. Yes, sir.

Q. Just what was it? Did the Lily White Company buy the physical assets of the Carbonless Company, or the stock? A. Well, you would term that consolidating or buying, or it may have been just a combination of business, which is it?

557 Q. I am just wondering what did happen, that is all. A. Well, it is a combination of the two.

Q. In combining the two you mean you only have a trade agreement? Both corporations are still in existence, are they? A. No. Of course, the Carbonless Oil Company hasn't been dissolved yet; that is the intention; it should have been done by this time; it will be done soon.

Q. What relation does the Lily White bear to the Carbonless? A. Not any.

Q. At the present time? A. At the present time, only we are consolidated. I don't know that they would have any business relations with the Carbonless

558 Oil Company.

Q. Do they own the stock of the Carbonless Company? A. The Carbonless Company took in turn for the assets—

Q. In other words, what happened was that the Lily White Oil Company traded the stock of the Lily White Oil Company to you personally for your stock in the Carbonless Oil Company? A. Yes.

Q. I see; and that was true of the other stockholders? A. Yes.

Q. While you were associated with the Carbonless Oil Company as manager, were you acquainted with their general business methods? A. I was.

559

Q. What was the general business of the Carbonless Oil Company; what was it engaged in? A. Marketing petroleum products through the dealer mostly, and to the consumer.

Q. Over what territory? A. Hardin County and Logan County.

Q. In that connection did you also deal in oil tanks and pumps? A. I did.

Q. Did you sell your tanks and pumps to your customers? A. Well, a very few that we sold until this ruling came on.

Q. Did you lease or loan such oil tanks and pumps 560
for a nominal consideration under tying contracts or agreements to the effect that the customers were not to use, in connection with these pumps which you leased and loaned, or the tanks, any gasoline products of a competing company or any other company than yours? A. We didn't exactly lease. We simply placed the outfit on the man's place of business.

Q. But under substantially those conditions? A. No, not exactly. We didn't draw him down that close that we positively wouldn't allow anyone else to put in our tank, but rather an understanding that so long as we was able to supply him at all times when he was in need that we would want to do that, of course.

561

Q. There was an understanding then that he was to buy all the gasoline of you to be used in these oil tanks and pumps which you leased? A. No.

Q. I hadn't finished my question. A. Pardon me.

Q. All oil to be used through these pumps if you had the oil to sell him and were in position to do so? A. Yes.

Q. And the consideration which was paid you for the use of the oil tanks and pumps? A. Nothing.

Q. None at all? A. None.

Q. Where did you secure your pump equipments? A. Various companies. Shall I name them?

562 *Otho F. Mikesell, Cross*

Q. Yes. A. Milwaukee, Bowser, Wayne, Dayton Pump Company. That covers about the amount of companies.

Q. The Milwaukee Pump and Tank Works were located where? A. Milwaukee.

Q. Wisconsin? A. Wisconsin.

Q. To whom did you order your oil tanks and pumps sent when you ordered them from these fac tories? A. To our company.

Q. Did you at any time have an oil pump and tank, or either, sent to a customer? A. No, sir.

563 Q. When you ordered such an equipment, did you order it for a particular customer? A. No, not as a rule.

Q. Did you at any time? A. There was times, yes.

Q. And when oil tanks and pumps were shipped into the state to you, what disposition did you make of them? A. In delivering to where they were to be used?

Q. Well, I want to get the whole disposition from the time they were sent to you. A. Well, if we had them in our wareroom, why, of course we hauled them to where they were to be used. Sometimes we would haul them from the railroad station to the place

564 where they were to be installed.

Q. And that was the railroad station to which they were shipped to you from the factories outside of the state? A. Yes, sir.

CROSS-EXAMINATION by Mr. Lippincott:

Q. Did you ever do any business outside of the State of Ohio? A. No.

Q. Mr. Mikesell, did any of your customers who owned—I mean to say who were using your tanks and pumps, ever buy other kinds of gasoline or oil? A.

565

Occasionally when they would run out, when we were unable to supply them at that time.

Q. Did you ever take away from such a customer the equipment that you had loaned or leased to him? A. No.

Q. On account of that? A. No.

Q. Now, state, Mr. Mikesell, whether it is not a fact that all your customers have used other gasolines and oils than yours at various times? A. No, I wouldn't say that.

Q. You wouldn't say all of that? A. No.

Q. Let me separate it a little bit. Have all of them used other oils than yours? A. Yes, sir, oils. 566

Q. What percentage of them have used other gasolines than yours? A. Well, I would say possibly five per cent.

Q. How many stations did you have, filling stations, when the Carbonless Oil Company was in existence? A. Filling stations or curb pumps?

Q. Filling stations? A. One.

Q. How many curbstone pumps did you have when the Carbonless Oil Company was in existence? A. 22 or 23.

Q. I believe you stated in your direct-examination that the Carbonless Oil Company was out of existence? A. Yes. 567

Q. And is not expecting to or will not operate any more, is that it? A. No, not under the name of Carbonless Oil Company, no.

Q. Well, you have severed your connection with the Carbonless Oil Company? A. Yes, sir.

Q. So have all the other stockholders of the Carbonless Oil Company? A. Yes, sir.

Q. And by deed you have conveyed all of your assets to the Lily White Oil Company; is that right? A. Yes, sir.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. Concerning the existence of the Carbonless Oil Company, you don't mean to testify that the Carbonless Oil Company, a corporation, is actually out of existence and been dissolved? A. No, it hasn't.

RE-CROSS EXAMINATION by Mr. Lippincott:

Q. By the last question you mean the dissolution has never been effected but it is out of existence? A.
569 So far as operation goes.

Q. That is what I mean, or intention to operate? A. Yes.

J. M. STOODT was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name and address? A. J. M. Stoodt, 324 South Metcalf, Lima.

Q. Ohio? A. Lima, Ohio, yes, sir.

570 Q. With what concern are you affiliated? A. With the Lily White Oil Company.

Q. Is that the Lily White Oil Company that is one of the respondents in this proceeding? A. Yes, sir.

Q. What is your connection with that company? A. Secretary and chairman of the executive board.

Q. In your position as secretary and chairman of the executive board are you acquainted with the general business and the business policy of your company? A. I am.

Mr. Zechiel: I will say that there has never been an agreed statement of facts on the ques-

571

tion of the jurisdiction which is the reason for putting these witnesses on the stand.

Q. What is the general business that your company is engaged in? A. Marketing of petroleum products.

Q. What is the territorial extent of your business? A. Northwestern Ohio.

Q. In connection with your gasoline business, do you also sell oil tanks and pumps? A. We haven't done that to any great extent, especially since along in April or the first of May because we did not know exactly where we were at.

572

Mr. Zechiel: I wonder if you really got my question. Will you read it again?

(Question read.)

A. We do at times to prospective customers.

Q. In connection with your business do you also lease and loan oil pumps and tanks to customers? A. We have.

Q. Are you doing so now? A. We are not.

Q. When did you install your last pump under the loan or lease? A. Well, I think it was along in January or February; in fact, we haven't installed—

Q. (Interrupting.) Of this year? A. Of this year, 1919. 573

Q. About how many pumps did you sell in the last two or three years? A. Well, we haven't sold very many. I think we sold about three this year. In fact, we haven't made any effort to sell any.

Q. How many did you sell last year? A. I don't think there were any sold last year.

Q. About how many pumps have you leased and loaned under agreements? A. Something over a hundred.

Q. Are those pumps now outstanding, under this lease agreement? A. They are.

Q. What are the general terms of your lease agreement? A. That they use our oils, gasolines and greases, as much as they can get the goods.

Q. Insofar as you are able to supply them? A. Insofar as we are able to furnish them.

Q. Is there any consideration given for the use of these equipments? A. No.

Q. Where do you buy your oil pumps and tanks? A. We have bought from the Wayne, from the Bow-
575 ser, from the Rapid Dayton, from the Tokime.

Q. Is that the Tokime Oil, Tank and Pump Company, or the Tokime Manufacturing Company? A. The Tokime Oil and Tank Company.

Q. Located at Ft. Wayne, Indiana? A. Located at Ft. Wayne, Indiana.

Q. How do you secure your oil tanks and pumps? I mean by that, what is the general business transaction? A. We usually take it up with the local representative.

Q. Of the pump manufacturing company? A. Of the pump manufacturing company, and we agree to take a certain number of pumps, by that gaining a
576 certain discount, and buying those pumps they have them shipped into our storehouse and at any time we wish to use them we have a service man who is in position to take one of those pumps out and install it in case we have a place for it.

Q. Have you ever ordered an oil tank and pump shipped directly to a customer? A. Not under the leased equipment proposition.

Q. But you have where they are sold? A. We have had one there that was sold.

Q. Where they are leased you have them then shipped to your warehouse? A. Yes, sir.

Q. Where? At Lima, Ohio? A. Lima, Ohio.

Q. From there you distribute them to your various customers to whom you lease or loan? A. We have them there in stock; in case we have a prospective customer who wishes a pump, we usually take one out of the stock room that fits the case in which we expect to use it. If it is a small customer we use a small pump, if it is a larger one we use a larger pump.

CROSS-EXAMINATION by Mr. Lippincott:

Q. Mr. Stoodt, when you buy a pump, state whether 578
or not the contract is closed in Lima for the pump?
A. Always.

Q. Always closed in Lima? A. Always.

Q. Do you do any business outside of the State of Ohio? A. We do not.

Q. Now, when you install a pump for a prospective customer, you state that you do that without consideration. You mean to say he does not pay actual money for that pump? A. He does not.

Q. But isn't it a fact that the consideration moving from him to you for that installation is that you will try to furnish gasoline or oils, whatever it may be, to him when he needs it? A. That is the case, but we 579
have quite a number of cases where oftentimes they will buy other goods and put them in there and we have had several of those come up in the last few months, and in one case in particular where I went to investigate and asked them why they did that—they were the two customers of the town, being a small town—they stated that so much of their trade demanded the goods of one of our competitors that they had to use it, but on thorough investigation I found that the agent for this competing company is a very personal friend and has quite a friendship in this par-

580 ticular town and of course they like to favor him and whenever they can they try to split up the business, using our equipment to split up the business with the other firm.

Q. How many filling stations have you? A. Ten.

Q. How many curbstone pumps have you? A. I should judge we have something over one hundred.

Q. How do you serve these, what is the method of getting the product to the curbstone pump? A. By a truck from our various distributing points.

Q. Is it your truck? A. Our truck.

581 Q. Now, when your truck is not at the point of the customer when he wants a product, what does the customer do? A. Well, he could call up, which quite a few of them do, call us and we make the delivery.

Q. What do the others do? A. Some of them get some one else to fill them until we get there. We have had one case lately again where they told our man not to come but once a week. We have about, say an eighteen or twenty-mile drive, but once a week does not carry them, and our man comes there on Monday and usually on Saturday they fill from the other party and then our man comes there on Monday and the other party's gas carries it over the Saturday and

582 Sunday trade. We have offered to make two deliveries but they insist we make only one.

Q. State to the examiner whether or not you have a single customer who uses your products exclusively? A. I am safe in saying we have none.

Q. Have you ever compelled any of your customers to forfeit the equipment which you have placed for him because of that fact? A. We have not.

Q. When you enter into an agreement with this customer, state whether or not there is an implied understanding that all that is required of him is to favor you if he can conveniently? A. That is the object in

583

the business, to install the pump, to have them use our gas if it is at all possible for them to do so, and then we in that way can advertise our gas in that locality, and work on our trade and tell them where it can be had.

Q. Now, isn't there quite a saving for the public, for everybody, by having that system of delivery of gasoline and the various products of your company? A. Without a doubt, because we can establish 25 curb pumps a great many times where we can only establish one service station.

584 Q. I want to ask you about that. What is approximately the minimum cost of installing a service station, a filling station? A. We have them running from $2,000 to $40,000.

Q. The one at the corner of Market and Union in the City of Lima, whether the cost of that one, what was the cost of that one? A. It stands us $40,000.

Q. Take the $40,000 installation and tell the Examiner how many average curbstone pumps you can place with the $40,000. A. On an average of about 80 of the five gallon pumps.

585 Q. Now, Mr. Stoodt, if you would place 80 of the 5-gallon pumps over the territory instead of placing a $40,000 service station, you may tell the Examiner whether or not the public would be better served? A. It gives us 80 to 1 to serve.

Q. And the distance between pumps will be less, is that it? A. It will be cut down just that per cent.

Q. State whether or not, if you know, automobile drivers are frequently running out of gasoline and oil upon the road? A. I have had that experience just a week ago, myself.

Q. Mr. Stoodt, if a seize and desist order were issued and the curbstone pump man was compelled to handle that proposition on his own resources, what

would happen? A. Well, there are several things that would happen.

Q. Tell the Examiner? A. First it would be, if you would go to them and ask them to buy their equipment, a good many of them say that they don't care for gasoline business as it brings them only the extra patronage for other supplies in the automobile line, and the next is that a great many of them would not invest the money to buy that equipment and sell and bother with the gasoline trade. And then there are others again that don't want to be troubled with gaso-
587 line. They wouldn't invest the money, as I said before, and that lots of garages, for instance, say they don't want to buy equipment and send a dollar an hour mechanic out to take care of the gasoline trade, for, say $1.28 for 5 gallons when they make 5 or 10 cents; if they sell for 25 1/2 they wouldn't make more than 5 cents.

Q. Now, Mr. Stoodt, carrying that just a step further, supposing somebody, either your company or the curbstone pump man now has the equipment and a seize and desist order were to issue. What would happen to that equipment with reference to there being an economic loss to somebody? A. If we were
588 compelled to either sell them or take them out and we would go to our customer or dealer and tell him that, it would be perhaps like this man stated on the stand yesterday; about 70 per cent wouldn't know there was such an organization as the Federal Trade Board, and he would tell them that the Federal Trade Board ordered that, they would think it was something we were trying to bluff them through with, either to buy them or to buy one of their own, while others would understand it. But they would think they had us in a pocket and say, "We will give you

589

$25.00" for a $500.00 equipment. That would be what we had invested. The result would be we would be out on a hundred pumps if we had a hundred pumps out—we would be out, say $50,000 investment. That would be all right for a large company that could probably sell them for 20 per cent of their investment and charge the rest up to advertising or something like that and still get by. But for the smaller concerns it would naturally work a great hardship on their finances.

Q. Now, Mr. Stoodt, is the Lily White gas an exclusive preparation? A. The Lily White name is a 590
trade-mark and registered.

Q. Is the gas you use a particular kind of gas? A. It is.

Q. Made for you? A. Not for us, but it is a certain specification we ask for when we buy.

Q. Now, Mr. Stoodt, state if that is a blended gas? A. No.

Q. State what would happen if into a tank of Lily White gas other gases, blended gases, were placed as to the effect upon the customer, the ultimate consumer of the gas? A. It might be that someone would put something in that would not come up to the specifications that were used, and some of our 591
customers would use that at that particular time and would condemn our gas and say it wasn't up to the quality that we had been furnishing them before. It would be detrimental to our gas.

Q. Have you had that experience in your business? A. We have. I had one instance not long ago in a certain town where I went to solicit a man's business. He told me that he could not use it. I asked him why. He explained to me. So I told him it was very unreasonable. You know sometimes these garage men

592 *J. M. Stoodt, Cross*

are very handy on condemning something they are not handling themselves. You know a little adjustment on the carburetor can change the effect of gasoline very quickly. As it happened, by careful investigation, I found this was not our gasoline and he admitted it, but nevertheless it was not the fault of the gasoline, even if it wasn't ours, but these particular people were not handling our gas, but the gas of the other party, but the consumer naturally thought it was our gas.

593 Q. Mr. Stoodt, is there an adjustment of the carburetor that is adaptable to Lily White, a pure gas, and another adjustment for a blended gas? A. There usually is.

Q. So that the man who uses one kind of gas today and fills his car with it, or whatever he may have, and with another kind of gas next week, will not have the same uniform result on account of an adjustment needed; is that it? A. Exactly so.

594 Q. Now, Mr. Stoodt, if you know, state to the Examiner what would happen to the beginner who has no business but who has formed a company and wants to sell gasoline, if the seize and desist order were put into effect, now that the present system has been going on some years? A. Well, he would have an awful time breaking in because if he was going to market something that was unknown it would be very hard for him to break into new territory, especially where he would have to go up against known qualities and known goods, just like in any other line. It would be very hard for him to establish himself in this line of business because the garage men, if they are using a certain grade of gas—not only the gasoline, but oils—it is pretty hard to change them. We have one man who uses our gasoline through a leased pump, but positively says he will not use our

595

oils. We have solicited him. He says, "There is no use; I am using a certain oil; I have used it for years. He says, "My business and trade is established on it and I don't care to change."

Q. Mr. Stoodt, what would happen to the new man entering the gas or oil business, having in mind the fact that the older companies, have through the leased pump and equipment plan, now built up their business, formed their connections, made their friendship with the purchaser? A. It would be awfully hard for him to get started unless he would be allowed to do something to meet the competition.

596

Q. Mr. Stoodt, is there any way that you can think of of overcoming that difficulty, this system having now been in vogue some years? A. Well, it would be very hard to overcome it. It couldn't hardly be overcome now, because it would not only work a hardship on the new man but the smaller companies that are just getting under way have been compelled to go to this system through some years back, and it is hard to break away from it now.

Q. Now, Mr. Stoodt, would you mind, if you can from memory, stating the proposition of the pump man to you when you buy in quantities? A. I don't just understand the question.

597

Mr. Lippincott: Read it.

(Question read.)

A. Oh, it depends on the amount we buy to get a certain discount.

Q. Can you tell us what that is? A. Usually 20 per cent.

Q. How many do you buy in order to get 20 per cent? A. I think it is 15 to 25, something like that. I am not just positive because we haven't been buy-

598 *J. M. Stoodt, Cross*

ing any pumps to any extent in the last eight or ten months, but it runs up as high as 50.

Q. Mr. Stoodt, do you get this proposition, the discount that you have mentioned here from the Bowser people as well as the other? A. We get it from any of them.

Q. You get it from any of them? (No reply.)

CROSS-EXAMINATION by Judge Chamberlin.

Q. Mr. Stoodt, you speak of the amount of loss that
599 would necessarily flow from a cease and desist order to your company. Have you considered any way in which you could salvage that so as to prevent the loss? A. I do not see how it could be.

Q. Have you ever considered the substitution of an agency contract for the present lease and loan contract? A. No, we have not.

Q. You have not considered it? A. No, we have not. You mean—may I understand your question? Do you mean by allowing them, say, a cent off on the gasoline, pay a cent more on the gallon to pay for their equipment?

Q. No, no. No matter what the method of the
600 compensation might be, if you would cancel the leasing contract that you now have with your distributor and make him your agent to distribute, paying him by whatever method you might agree upon and thereby continuing the operation of your equipment? A. We have that. We haven't got it in force but we have tried to talk to dealers on that proposition, but we haven't any that are doing that in the former Lily White territory. I don't know just what there is in the territory taken over from the Carbonless Oil Company on that, but not in any territory we have been in, in that particular form.

Q. Would you, in your present situation, in order to protect the leased property—would you consider that as one of the means of protecting that leased property? A. I presume we would.

Q. In that way the economical situation would not be changed? A. Well, now, it would to a certain extent. We lose in some small towns where we have just—of course there would not be so much, where we just have a small one-gallon pump. In the winter season they do not sell gasoline in those small grocery stores probably, not enough to speak of. In the summer season their business would be very good, and, of 602
course, it would be a pretty hard matter to give them —to make them an allowance, or in other words a salary—is that what you mean?

Q. I don't care what the method of compensation is, but the point is, instead of a lease to them and an operation of the equipment by them, you yourself would operate it through them as an agent. A. Pay them a salary the same as we would any man to operate it?

Q. Salaried men. A. We haven't any of those.

Q. I see. A. We haven't anything like that, but I don't believe that that would work in all cases; it might in some, especially the larger cities, in garages 603
that have a year-round business. But whenever you do that and you run it in that way you have got to put a little bit more money in it again to make it have an appearance of a service station.

Q. Would there also be some advantage in that by being able to control the sale of your product and protect your trade-mark? A. We naturally would control all this product exclusively from that standpoint.

Q. From that standpoint it would be advantageous and would appeal to you as good business? A. Yes, I believe it would.

604 *J. M. Stoodt, Cross*

CROSS-EXAMINATION by Mr. Holliday:

Q. Mr. Stoodt, I believe you said that the system of leasing and loaning pumps that is now in force has resulted in certain savings or economies to the oil companies, that is, the wholesalers. Now, I wish, if you can, you would describe that a little more in detail. In the first place, I will ask you is it not a fact in your judgment from your experience, that the custom of leasing or loaning pumps for a nominal consideration has resulted in a much larger use
605 of curb pumps, in a greater number of pumps being installed, than there would have been had this system not been continued? A. I think that is true.

Q. And is it not a fact that the result of that larger distribution facility of the oil industry has resulted in most of the automobile owners abandoning the use of their small tanks in their own private garages? A. It has, but there is a little advantage there in the curb pump; we haven't got the man's salary to pay.

Q. Is it not a fact then that the result has been that there has been a storage of gasoline in larger quantities and the storage has been centralized and not scattered in many small tanks? A. Oh, that is true.

606 Q. And is it not a fact that as a result the oil companies, the wholesalers are able to make larger dumps and thereby effect a saving in the cost of hauling the gasoline? A. Without a doubt. If they had to make smaller deliveries the overhead expense would naturally run higher.

Q. Under the present system, it is your custom, is it not, in the morning when you start a tank driver out, to give him a routing of the dumps that he is to make of these different tanks? A. We have certain days for certain territory.

Q. Is there not an economical advantage in a tank wagon driver being able to concentrate his time upon delivery in those larger quantities without having to go from house to house and solicit orders? A. There are a great many times when we could not make it from house to house owing to the bad road conditions, especially in the country.

Q. Would not a cease and desist order tend to throw you back to that old situation of loss of economy in solicitation? A. Absolutely.

RE-CROSS EXAMINATION by Mr. Rubrecht: 608

Q. Mr. Stoodt, if you can tell us, thinking about this agency proposition, what would that require you to do if you were to establish an agency instead of leasing and loaning a tank; what additional system or plan would you have to put in operation? A. In leasing and loaning a tank we can place a pump and a tank to a place and then the man can fix it up to suit himself. If we owned that it would be necessary for us to do the fixing up and naturally we would not want to place an outfit in a service station of ours unless we would put up something like a large electric sign or something to designate and show that that is 609
our own individual stand, which would mean at least, in a small way—just a rental proposition—I presume in front of a garage, say we would rent it from a garage, a certain space to do this, and pay him a salary to run it, we would naturally have to have from $500 to $1,000 or $1,500 additional expenditure at that particular place in order to do that, because we would have to fix up a drive to drive in, and as I said before, advertising, putting up our signs and our trellis and making it ornamental as well.

610 *J. M. Stoodt, Re-cross*

Q. Wouldn't that also necessitate the system of checking up and requiring bonds and liability insurance and so on, and daily reports? A. We would be compelled to open up our own individual bank account and furnish those banks with pre-stamped envelopes to receive our reports daily, the same as we do at our service stations. It would put it on the service station plan which would naturally operate it at greater expense.

Q. It would be the same as a service station except not quite so elaborate and not quite so expensive, but
611 you would have to have the same system to run it. A. We would be compelled to; yes, sir.

Q. To use the same system? A. Yes, sir.

Q. Who would have to pay that additional expense; where would you get it? A. That would be up to the Lily White Oil Company.

Q. Would you increase the price, or in any way get it back from the public? A. No, we would have to maintain the same price that the garage man was getting. If he was getting 25 1/2 we would have to do the same.

Q. You would have to maintain the market price? A. Yes, sir.

612 Q. Then your company would lose? A. Yes, sir.

Q. You would have that much more invested? A. We would have that much more invested.

Q. And hence your profit would be less? A. Yes, sir.

Q. Now, suppose, Mr. Stoodt, that that system were made uniform and universal by the orders of the Federal Trade Commission and all of the dealers were forced to go to that, or all of the wholesalers were forced to go to that system; then who would pay the cost, the additional expense of running that? A. Will you read that question?

Q. Let me ask the direct question. In that situation would it not be necessary to raise the price of gasoline to meet that expense? A. We would have to do that if we would expect to make the same profit that we have made, if all the companies were forced to do the same thing. It would force us to do it.

RE-DIRECT EXAMINATION:

Q. Now, which do you think that it would be that this order of the Commission would do, drive the business into service stations or back into the old form? 614
You have testified it would do both. Now, which one is it? A. Well, in the case of the larger companies it would drive it to service stations.

Q. And with the smaller ones? A. The same as it had been before.

Q. It would drive it to— A. (**Interrupting.**) F dently we could not put in service stations in all our towns.

Q. It would drive you back to the old form of doing business? A. Yes, sir, without a doubt.

Q. How does it happen you do any service station business at all, if it is so economical and you are losing money at it every day? A. Is that a question? 615

Q. Yes. A. Well, we are adding a service station whenever we can and the competition demands. We are compelled to add a service station, especially in a town of any size at all.

Q. Do you make any money out of it? A. Not the money we could if we were just hauling to pumps.

Q. Why don't you haul to pumps? You say you put in about 80 pumps for the money you have in one service station. A. Because the public, now days, if there are service stations handy, would prefer going to a service station where they have water and

air and gasoline and a man to take care of them in every way.

Q. Therefore, if a service station is so much more expensive, the public is perfectly willing to pay for it? A. They won't pay an increased price.

Q. Isn't it true that they do use the service station? A. Yes, sir.

Q. Don't they prefer the service station? A. They prefer the service station.

Q. You say they won't pay any increased price? A. The service station is getting the same price as
617 they are at the time.

Q. Do you honestly believe that the public would not use that service station if it had to pay a higher price, if there were nothing else but service stations? A. They, the majority of them would not.

Q. What would they do? A. They would go to the pumps. It would split it up again.

Q. Go back to using pumps? A. Some would go back to where there were pumps, drop around here, there and everywhere where they can buy it.

Q. Through the curbstone pumps? A. They would go to the curbstone pumps.

Q. How much of the business do you think would
618 be done through the curbstone pumps if such a system came into vogue? A. That would be very hard for me to tell.

Q. Oh, no; you are an expert; you have testified as to the results of things. You must know or you couldn't get these results so definitely. A. Well, I don't know.

Q. You don't know at all? A. No.

Q. You haven't any idea of how much business would be done through the curbstone pumps if those— A. (Interrupting.) Probably 50 per cent.

Q. Do you think that 50 per cent of the pumps would stay in garages and other retail places? A. Well, that would be true if they would buy them, probably.

Q. I am asking you now as to your best impression as to the effect of the business of this proposed order. A. Perhaps they would.

Q. 50 per cent of the business would still be done through curbstone pumps; is that right? A. To start with, but it would eventually come to the service station.

Q. How is that now? A. Just as I have stated be- 620
fore. A great many people demand service and if a service station sells at the same price that they do at the garage, then they would go to the service station.

Q. How much business would finally be done through curbstone pumps? A. That is a condition we haven't lived up to yet; I cannot tell you.

Q. Well, what is your opinion about it? You are basing your judgment as to the effect of this order now on the business on your knowledge and information about the business. You must have some now. A. To start with, probably 50 per cent, but it would naturally be cut down.

Q. To how far? Your best judgment about it. A. 621
I do not believe there would be more than 20 per cent of the business would be done through the pumps.

Q. Would 20 per cent of the total business be done through curbstone pumps? A. Perhaps so.

Q. And the rest of it would be done through service stations? A. Yes, sir, probably.

Q. My recollection as to your answer to Mr. Holliday's question as to the effect of this cease and desist order is that it would drive the business back to the private ownership and small tanks; you have already consumed a hundred per cent of this business. Now,

how much of that is going back to the small tank? A. According to that there would not be any.

Q. I believe you testified on cross-examination that it was a great advantage to you to have leased pumps because it afforded you a means of advertising your particular brand of gas; is that right? A. Yes, sir.

Q. And also that if you did not have the leased pumps that you could not prevent your customers from mixing your gasoline with others? A. We could not.

Q. And that that would be a great detriment to you and to the public. A. It would.

623 Q. Isn't it a fact that right now not a single one of your customers has a pure grade of your own gasoline? A. There are some that have, but I say that they do not all—in fact we haven't got but one that uses exclusively our gasoline.

Q. In fact, every customer you have then mixes this gasoline for you today, even though you are using the lease system pumps? A. Not gasoline entirely. We have perhaps 20 per cent that do that, but there isn't a one that uses our gasoline and oils exclusively.

Q. Now, confining it to the gasoline; how many of your gasoline customers are there who do not at

624 some time buy gasoline from a competing company and mix it in the same tank in which you have had yours or have some of yours? A. I should judge we have 20 per cent that buy other gas and put it into our tanks.

Q. Over that 20 per cent your leasing system has no control at all, has it? A. Not a whole lot.

Q. Could you refuse to sell gasoline to customers who do not use in any tank that they might own your gasoline exclusively so long as they had your sign on top of the pump? A. We could, but we don't know it until after it has been put in.

625

Q. You don't know it under your leasing system until after it has been put in? A. No, but here is what we mean. We don't like to take that out of there, but we ask them if they have not had service or why they did this. They state "Because we didn't happen to have the gasoline," or for some cause or another, but before we know it they do it again.

Q. But if they owned their own pumps wouldn't it be possible to advertise Lily White gasoline on top of that pump by use of a globe, which is the common way of doing this advertising? Wouldn't that be possible even though they owned their own pumps? 626
A. Yes, but you wouldn't have any way at all then—they could do that very thing then, of course.

Q. And the next day when they wanted to buy from you you could refuse to sell them because they refused to keep your gasoline pure? A. We could refuse to sell them, but we are out to get as much business as we can.

Q. You don't care whether they mix it or not? A. We care, but we don't like to run any chance of making them angry.

Q. Have you ever refused to sell a single gallon of gasoline to a customer who mixed your gasoline with somebody else's? A. No, we haven't, but we have 627
done this; I went to see a man and said we were willing to take up the equipment and he then told me he would not do that. This was just a short time ago. I have been told—I have no substantial proof of it, but I have been told that he has done it again.

Q. You mean you had a pump and tank leased to a customer who was using gasoline of another concern and you told him you were going to remove the pump and tank? A. We told him there wasn't any use to leave it there if he was going to sell other gas in our outfit.

628 *J. M. Stoodt, Re-direct*

Q. How much had he been selling? A. I had been told that he had sold about half.

Q. You thought half wasn't enough business for yourselves? A. We thought it wasn't fair since we had the investment.

Q. But if it had been two-thirds that he bought of you, it would have been sufficient? A. Not at all.

Q. You didn't take these other pumps out because they did not use your gasoline? A. I have gone to call on all of them.

Q. Have you taken any pumps out? A. No.

629 Q. Although it is a fact that a large number of them have been mixing gasoline? A. We have about 20 per cent that have done that at times, I presume. At least, I have been told that.

Q. You didn't take any pumps out because of that? A. I haven't yet. I told him I would be willing to sell the pump or take it out if he preferred to use the other gas.

Q. Are you going to take that pump out? A. The question is still open.

Q. If he takes 90 per cent of your gasoline, was you going to take it out? A. Well, if he takes 90 per cent—if he doesn't take all of ours we have a right

630 to take it out.

Q. Are you going to take it out? A. We will give him a chance to buy it as a second-hand outfit, if he wants it.

Q. How long have you been in the gasoline business? A. I have been directly with this company, well, since a year ago last September. I have been in the gasoline business but not in the marketing end.

Q. What was your business prior to the present business? A. Interested in the marketing company.

Q. What were you doing? A. I was not operating in the oil business.

631

Q. I want to know what you were doing. I don't car so much to know what you were not doing. But what were you doing? A. Before I became active in the Lily White Company?

Q. Yes. A. I was with the Deisel-Weimer Company.

Q. What is that? A. Cigar manufacturing company.

Q. How long have you been engaged in that? A. About five years—that is, not engaged. I have been a stockholder.

632

Q. How long have you been working the gasoline game from an operating point of view? A. Since a year ago last September.

Q. And then you have actually had a year and a half experience in the gasoline game? A. Not a year and a half—a year last September.

Q. About a year then, only a little more than a year experience in the gasoline business? A. Yes.

Q. You answered these questions on the hypothesis of what the order of the Federal Trade Commission would do. What is this order of the Federal Trade Commission that you are speaking of? A. Discontinuing the leasing of tanks and pumps to garages or anyone that sells gasoline or oils.

633

Q. Absolutely? A. Yes, sir.

Q. Then I think you are very much mistaken about the order. If that were not the effect of the order, would you change your answers about this economical situation? A. No. I don't think, from what I have gone over—I thought I understood the questions thoroughly.

Q. But if you knew that the order did not have that effect, would that change your answers to these economic questions that have been put to you? A. It would not. I have left that to our attorney, too, possibly.

634 *J. M. Stoodt, Re-cross*

Q. No, but your answers to his questions as to the effect of this cease and desist order. A. Oh, no.

Q. If the cease and desist order did not have the effect which you just now described, would you change your answers? A. No. I gave those directly, according to the best of my knowledge.

Q. That is, those answers were all depending on your interpretation of this cease and desist order that you have now stated? A. Exactly.

635 Mr. Rubrecht: Well, Mr. Zechiel, if we are mistaken on the effect of this order—we are all like the witness: that is our idea of what you are striving to do.

Mr. Zechiel: If this witness represents your ideas you are all badly mistaken.

Mr. Rubrecht: Are you through with him, Mr. Zechiel?

Mr. Zechiel: I am not through asking questions, no, but you can ask him what you want.

RE-CROSS EXAMINATION by Mr. Rubrecht:

636 Q. Now, Mr. Stoodt, I wish you would listen to this language. We will get straightened out. We want to get right. "Now, therefore, it is ordered," this is a copy of an order which was issued against the Iowa Oil Company by the Federal Trade Commission, and the questions that were propounded to you were on the assumption that if an order was issued against your company and all other companies it would be the same kind of an order. It reads as follows: "Now, therefore, it is ordered that the respondent, the Iowa Oil Company, shall cease and desist from, as, directly or indirectly leasing pumps or tanks or both and their equipment for storing and handling petroleum products in the furtherance of its petro-

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leum business at a rental which will not yield to it a reasonable profit on the cost of the same, after making due allowance for depreciation and other items usually considered when leasing property for the purpose of obtaining a reasonable profit therefrom, and from doing any matter or thing which would have the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made." Now, you have got that in your mind? A. All but the last paragraph.

Q. You mean the last sentence? A. Yes.

638

Q. "Which would have the same unlawful effect as that resulting from the practice herein prohibited." That is, of course, referring to the first part of it. "And by reason of which this order is made." Now, again, too, the order prohibits "entering into contracts or agreements with dealers of its petroleum products or from continuing to operate under any contract or agreement already entered into whereby such dealers agreed or have an understanding that as a consideration for the leasing to them of such pumps and tanks and their devices the same shall be used only for storing or handling the products of respondent, and from doing anything having the same unlawful effect as that resulting from the practice herein prohibited and by reason of which this order is made." That gives the two phases of the order, as I undertsand it.

639

Mr. Zechiel: There is a proviso here.

Q. "That as to such pumps and tanks and devices as are now leased by respondent contrary to the orders contained in paragraphs 1 and 2 herein," which I have just read to you, "respondent shall have blank months," in one case they gave them four months, "from the date hereof to enter into contracts or agree-

640 *J. M. Stoodt, Re-direct*

ments with respect to the same which will not be incompatible with the spirit and the intent of this order." That might be illustrated by the proposition that was made by one of the gentlemen here, who said, "What would be your opinion if agents were appointed and located at the various points?" I believe I asked you the question. Now, that is the other provision. "It is also ordered under and by virtue of the authority conferred on the Commission"—

Mr. Zechiel: That wouldn't have anything
641 to do with this.

Mr. Rubrecht: No, that has nothing to do with this particular matter about which we are talking to you.

Q. (Continuing.) Now, understand the question as I have given it to you from the order which we assume will be issued if an order is issued against all companies, do you wish to change your answers as to the propositions which were made to you and the questions propounded upon the various phases of the matter to which you have been testifying? A. I do not.

Mr. Rubrecht: Now, Mr. Zechiel, you can
642 go to it.

RE-DIRECT EXAMINATION by Mr. Zechiel:

Q. What effect do you think this order will have on your business anyway? A. Well, it will be just this way. The larger companies that are able to afford to and put in more elaborate filling stations, service stations, will probably in due time take care of the greatest per cent of the business.

Q. You will have none? A. You see if the garages are driven out and the business is finally carried to

service stations, in localities you can get the business of the garage through personal solicitation and in that way get them to handle your goods, and they in turn will swing their customers or their trade to your gasoline through their own place of business.

Q. Now, I don't quite understand your answer.

Mr. Zechiel: Will you read that answer?

(Answer read.)

Q. You say the garages will be driven out, and still you say you can get business from the garage. Explain that. It seems to be an inexplainable condition? A. I mean if the pumps are to remain in effect as they are and garages still continue to have such leased pumps, we can still continue to get our share of business, but if it comes the other way, some of the garages will no doubt discontinue handling gasoline if they are compelled to buy their own outfits, and of course that will eliminate a certain per cent of our business unless we erect service stations. 644

Q. You are thoroughly convinced, are you, that a big per cent, or about twenty per cent—I believe you said twenty-five—twenty per cent of the business would finally go to service stations as a result of this order if it were made? A. I think it would. 645

Q. How long had the Lily White Company been in existence when you became associated with it actively?

A. Actively?

Q. Yes. A. About four years, I should think.

Q. Do you know whether the Lily White Company immediately upon its inception into business started leasing and loaning pumps? A. Well, I am not sure of that.

Q. Did you ever personally go out and solicit business from the trade? A. Did I?

Q. Yes. A. Yes, since I was connected with it.

Q. Since you were connected with the business? A. Before that I didn't.

Q. Have you traveled about considerably over your territory? A. Yes, considerably.

Q. What per cent of the business done by garages and other retailers is done through leasing and loaning pumps? A. Outside of Lima, I should judge about eighty or ninety per cent of our business.

Q. Not your business? A. All together.

Q. All business? A. Well, I should judge at least
647 seventy-five per cent.

Q. Seventy-five per cent of all the pumps in existence now are leased and loaned? A. In our territory we have no large cities with the exception of Lima.

Q. Now, Mr. Stoodt, don't you think that the rest of the twenty-five per cent of the business which is done through privately owned pumps would likely remain, even if this order were issued? A. Well, I don't know that there are any privately owned pumps —not many. There are a few service stations.

(Previous question read as follows):

"Q. What per cent of the business done by garages
648 and other retailers is done through leasing and loaning pumps"

Q. I will modify that by adding "other than service stations"? A. I should judge seventy-five per cent.

Q. Now, when you gave your answer here of seventy to seventy-five per cent, you were not considering service stations at all? A. That is what I was thinking about. I was considering service stations.

Q. What per cent of the business is done through service stations? A. I presume it is close to twenty-five per cent.

649

Q. And then your impression is that there are not any privately owned pumps in your territory at all? A. Very, very few.

Q. Let us see what are your counties? A. Well, we have Fulton, Henry, Paulding, Putnam, Mercer, Allen, Van Wert, Auglaise, Hardin, Logan, Hancock, Wood. I think that gets about all of them.

Q. Now, in all these counties it is your best judgment that there are scarcely any privately owned pumps at all, curbstone pumps, through which gasoline is sold to customers, to the general public; that is your best judgment? A. There are two, I think, at Findlay that I know of. There is one at Wausseon.

650

Q. I don't care for the enumeration, but I want your best judgment about the whole thing? A. All the gasoline sold in that territory? I don't believe there is more than five per cent.

Q. Five per cent of the gasoline selling is done through pumps privately owned? A. That is my best judgment, best knowledge.

Q. Do you know when the practice of leasing and loaning pumps came into general existence in the State of Ohio? A. Well, I know of them doing that about four years ago.

651

Q. Do you know how general it was at that time? A. I couldn't say because I was not out over the territory, but I know it has been done to a certain extent.

Q. What per cent of the present general distribution of oil tanks and pumps had been installed about that time, if you know anything about it at all? A. I couldn't say because I was not following that up.

Q. You don't know whether at that time there were a great many privately owned oil tanks or pumps or not, do you? A. I do not.

Q. What would you say to this: if nobody had started the leasing and loaning of pumps at all, would

garage people and retailers have bought oil tanks and pumps? A. They possibly would because the service station has just, you might say, come in within the last two years, and of course they would have evidently bought tanks and pumps.

Q. But, now, if you were restored to that condition, your opinion is different? A. It is different.

Q. What is your opinion about it now? A. Well, I don't believe that there would be more than twenty per cent that would buy their own tanks and pumps.

Q. Twenty per cent of the business would buy its
653 own tanks and pumps? A. Possibly so.

Q. Where would that twenty per cent lie, in the large cities or in the small places? A. Not practically in the large cities any more than small ones, but in the larger garages where they have perhaps a great amount of storage of cars and people that keep their cars there and call there for them; they really would need them in connection with their garage business.

Q. So that all the large garages would own their own pumps; is that true? A. All the large garages evidently would.

Q. How about the rural community, the small
654 towns? A. I don't believe you would be able to find many tanks and pumps in the rural districts.

Q. You think service stations would start up there? A. No, I don't.

Q. What do you think would happen? A. I think it would go to the larger towns where service stations or garages are at present handling it.

Q. Let us see what sized town you refer to. What is the size of the town you refer to, what is the population of the town you have in mind? A. Well, I presume it would run from towns of 4,000 up.

Q. You think then a town of 4,000— A. I beg your pardon?

Q. If you hadn't finished, go ahead? A. Possibly as low as 2,500 population.

Q. You think a town of 2,500 population, if this order were put into effect, would have no service stations or pumps? A. There would be very few in towns of that size, and possibly smaller.

Q. I am trying to fix that limit. What limit do you want to place on these small towns, about, which you have testified where there would be neither service stations or pumps, curbstone pumps? A. Well, I don't believe you would get the town of 1,500 and down.

Q. Now, you will fix it at 1,500 at this time, will we? A. You might now and then find something between 1,500 and 2,000 or 2,500.

Q. How far are you going to shove me down? I want to get there and quit. Is 1,500 low enough? A. Well, perhaps.

Q. You will say 1,500, will you? A. Yes.

Q. You think, in your opinion, then, no town—or at least it would be the overwhelmingly prevailing general condition of business that in towns of 1,500 and smaller there would be neither service stations nor oil pumps and tanks—curbstone pumps we generally refer to—if this order of the Commission would go into effect. Am I right? A. I think you are.

Q. All of those people would go to the city for their business? A. They would have to or haul it home in cans.

Q. Do you think they would haul it home in cans? A. Possibly some of them would—farmers. They would evidently have to do something like that to carry them through the season, that is during the work week when they are very busy and couldn't drive.

658 *J. M. Stoodt, Re-direct*

Q. Now, you say you don't know what was the condition as to the distribution of oil tanks and pumps four years ago? A. Yes.

Q. You are not acquainted with the business four years ago at all and you don't know whether four years ago before this system of leasing and loaning came into practice there were oil tanks and pumps distributed in towns less than 1,500, do you? A. No, I don't know anything about that.

Q. By the way, do you order your pumps shipped from the factories? A. Yes, sir.

659 Q. When you want one you write a letter to the factory for it? A. We usually buy them in quantities, five or ten pumps, and have them shipped into Lima.

Q. When you want some to come in you order them through the factory? A. Through our local salesman.

Q. That is what I am trying to straighten out. Does your local salesman do all that? A. Yes, sir; he comes out and calls on us. He lives there and keeps in constant touch with us.

Q. He comes out, and what is the result; you leave an order with him? A. If we are in need of anything, we give him the order. He has them shipped in

660 at a certain time. Of course, we take them in and put them in stock. We have a service man who installs these and if we happen to need one, he is instructed to get a pump.

Q. Now, I believe you testified that the practice of agency stations—by the way, what do you think would happen to the agency situation anyway? I believe you have testified that 20 per cent of the garage people would own their own pumps and the rest of the business, except 5 per cent would be done through service stations. What do you think about the agency system? Do you think it might come into practice if this

order were issued? A. Well, that may come into practice. It looks practicable although it would mean the expenditure of considerably more money.

Q. What per cent do you think it will develop into, of the whole business? A. That would be a service station proposition probably, in time, as I said. In the service station it would take at least, perhaps 70 or 75 per cent.

Q. That is, you are considering agency along with service station when you testify as to agency? A. Yes, sir.

Q. What experience have you had in this agency 662
line of business? A. Well, we haven't had any.

Q. You don't know anything about it? A. No.

Q. You have had about a year's experience in this kind of business? A. I think the first of September, this last September.

RE-DIRECT EXAMINATION by Mr. Lippincott:

Q. Mr. Stoodt, in your garages, for illustration at Bellefontaine, Ohio, the man in charge there is your agent, is he not? A. Yes, sir.

Q. Then when you answered Mr. Zechiel—when 663
Mr. Zechiel asked you if you had any agents and you answered you did not, you meant no curbstone men who were your agents? A. Well, I answered that in the first part of it, that we had not any in the Lily White, but what was in the Carbonless I was not quite familiar with because Mr. Mikesell was looking after that.

Mr. Zechiel: If I have this correct, it is understood that all the rest of the respondents are to agree on a stipulation as to the facts of jurisdiction, whatever are the facts with re-

spect to pumps and also as to practice. I will therefore not call these witnesses:

R. E. Goodwin, 2268 Maplewood, Toledo, who appears for C. A. Ulsh.

P. R. McLean, 11108 Ashburg, Cleveland, who appears for George R. Canfield.

Leroy Miller, care of Factory Oil Company, Akron.

C. A. Lauback, 203 Spahr Building, Columbus.

W. R. Welton, Leonard and Taylor Avenues,
565 Columbus.

Whereupon at 12:15 o'clock P. M., a recess was taken until 1:30 o'clock P. M.

JOHN H. QUINN was thereupon called as a witness and being duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your name and address? A. John A. Quinn, Mansfield, Ohio, Southern Hotel.

Q. By whom are you employed, Mr. Quinn? A.
666 S. F. Bowser, Fort Wayne, Indiana.

Q. How long have you been employed by S. F. Bowser? A. Four years next January.

Q. How much of the time of your employment has been occupied in work in the State of Ohio? A. All of it with the exception of ten weeks when we laid off.

Q. That is just recently? A. Yes, sir.

Q. You are now in the employ of the company? A. Yes, sir.

Q. What is the territory over which you do business? A. I have Medina, Wayne, Richland, Crawford, Huron, Seneca, Erie.

Q. Those are counties in the State of Ohio? A. Yes, sir.

Mr. Zechiel: I wonder if we could agree with the method by which the Bowsers do business in Mr. Quinn's territory is the same as that described by the other two Bowser witnesses as to interstate commerce?

Judge Chamberlin: I guess there is no question about it.

Mr. Rubrecht: I presume they use the same methods. 668

Mr. Zechiel: Let us ask the witness.

Q. Is your general method of doing business for the S. F. Bowser Company similar to that of the other Bowser agencies in the State of Ohio? A. I expect so; I solicit all the trade, stores, groceries, garages, factories.

Q. Did you hear the other Bowser witnesses testify yesterday? A. I did not.

Q. In a general way you solicit the trade of the public and order pumps sent into that territory? A. Yes, sir.

Mr. Zechiel: Perhaps that is sufficient without any stipulation. 669

Q. Mr. Quinn in your experience with the S. F. Bowser people have you ever lost any customers or prospective customers— A. Two.

Q. Just a minute until I finish the question—because such customers or prospective customers said to you at the time that they could secure oil pump equipments from parties for a nominal consideration? A. Well, that varies in different territories.

Q. Generally over your territory. A. Take it in Mansfield it is about seventy-five to eighty per cent.

Q. Now or four years ago? A. It was when I went there.

Q. Now seventy-five per cent what? A. Seventy-five per cent of oil company outfits.

Q. Has that per cent changed any to date? A. Oh, yes; I have sold some in there.

Q. Now, you did not get my question. Read my question.

(Question read.)

A. No, it is just about the same.

671 Q. Has your per cent of sales of oil tanks and pumps in your territory increased or decreased, if either, during your experience with the Bowser Company? A. It has just been about normal every year I have been with them.

Q. About how many oil tanks and pumps do you sell during the year to garages and other retailers? A. Well around one hundred.

Q. That is per year? A. Yes, sir.

Q. How many such cases? A. Oh, I have had several of them. I said two. When I said two I meant two direct sales that I had already made.

Q. Have you ever solicted business for your com-
72 pany and been refused such business because the parties whom you solicted said they were able to secure these oil tanks and pumps from oil companies or other concerns which would furnish them at a nominal consideration? A. Yes, sir.

Q. Has that been a frequent occurrence in your experience? A. Yes, sir.

Q. When you began service to the Bowser Company in the State of Ohio, if you know, was the practice of leasing and loaning oil tanks and pumps for a nominal consideration under tying contracts a general practice among the trade? A. Yes, sir.

Q. You say it was at that time a general practice? A. Yes, sir.

Q. At that time in your best judgment what was the relative proportions of leased and loaned oil tanks and pumps and owned outright pumps? A. Yes, sir.

Q. Do you know how many you have sold since you have been in that territory under such circumstances? A. Well, I could not give you exactly the amount.

Q. Something near it. A. About 300; somewheres around there, 325.

Q. To whom did you sell in a general way, to whom did you sell these oil tanks and pumps, to large garages 674
in large cities or small garages in large cities or smaller garages in the rural territory? A. We sell them to large, some to smaller ones, factories, stores.

Q. Is it a fact or not that you sell oil tanks and pumps to towns of four or five hundred population? A. Yes, sir, and less than that.

Q. What is the general minimum population of the towns in which you sell oil tanks and pumps? A. Oh, they run anywheres from four hundred up, some less I guess. About three hundred up.

Q. Has that been true throughout all your experience as salesman for the Bowser concern? A. Yes, sir, the oil companies have not been as active in the 675
smaller places as they have in the larger places.

Q. By that what do you mean? A. They have not put out as many outfits under lease.

Q. Under lease? A. Yes, sir.

Q. By the smaller territory you mean in the rural towns, not as many as in the large cities? A. They work it two ways in the smaller territory. If they use so much they will lease it to them on the same basis as they do in larger places. If they do not they have to pay for them.

Q. What is your impression about the distribution

of oil tanks and pumps in the rural communities; is it equal to the demand for gasoline? A. I think so.

Q. Let me put that question in a little different form What is your best judgment about the facilities for handling the sale and distribution of gasoline in the rural communities, small towns; is there a fairly sufficient distribution of oil tanks and pumps to take care of the demand for gasoline, the demand and sale of gasoline? A. Oh, yes, it keeps changing; some who have smaller outfits trade them in for larger ones.

Q. You also sell for replacement in some cases?
677 A. Yes, sir.

Q. You make some original sales do you in the more rural communities? A. Oh, yes, part of them.

Q. What is your best estimate of the per cent of oil tanks and pumps in the rural communities among retailers of gasoline that are owned outright and the per cent leased or loaned? I am directing your attention to the smaller towns and rural communities. A. It is about fifty-fifty in the smaller towns.

Q. Of the fifty per cent that are leased and loaned from your experience as a salesman what per cent of those pumps would have been sold if there had
678 been no distribution of oil tanks and pumps for a nominal consideration? A. I think they could have retained about twenty-five or thirty per cent of them.

Q. And the rest of the per cent, twenty to twenty-five per cent you think there would have been no distribution of oil tanks and pumps if they had not been distributed by the nominal consideration plan? A. No.

Q. Use that remaining twenty to twenty-five per cent, what part of those pumps have been fairly continuous in their operations and what part have been more or less intermittent, staying a little while and

then removing? A. All that is in my territory are working all the while. Some sell more than others. Some have larger sales, some smaller just like anything else.

(Question read.)

A. They are about all working as far as I know. If they change hands a successor follows right along.

Q. You are speaking with respect to the twenty per cent that you could not have sold, that could not have been in existence except they were given away? A. Yes. 680

No cross-examination.

Mr. Zeichel: Mr. Examiner, W. J. Bates has been called as a witness but fails to respond.

EMANUEL STEINHAUSER was thereupon called as a witness and being duly sworn, testified as follows:

Direct-examination by Mr. Zechiel: 681

Q. Your full name, Mr. Steinhauser? A. Emanuel Steinhauser.

Q. You were subpoenaed under the name of E. Steinhauser? A. Yes, sir.

Q. And your address? A. 18 South Howard, Akron, Ohio.

Q. By whom are you employed? A. S. F. Bowser & Company, Fort Wayne, Indiana.

Q. How long have you been in the employ of that company? A. About five years; five years this January.

682 *Emanuel Steinhauser, Direct*

Q. How much of that term of employment has been spent by you in the State of Ohio? A. All of it.

Q. What is your territory in the State of Ohio? A. Stark, Summit, and Portage Counties.

Q. Mr. Steinhauser, in connection with your business with the Bowser concern have you ever solicited customers or prospective customers who have refused to buy from you stating as their reason that they were able to secure such equipments for a mere nominal consideration from oil companies or other parties?
683 A. Yes, sir.

Q. How frequent has that been the case? A. When I first came into the territory it was very frequent. That was my first two years' experience.

Q. What was it since that? A. Since that it has not been frequent.

Q. It has been frequent? A. Not been frequent.

Q. Now, were these cases cases where it was said that oil companies would furnish the equipment for a nominal consideration? A. Yes, sir, under a lease plan.

Q. Have you any explanation for the decreasing frequency of that fact? A. Yes, sir, within the last
684 year or probably more than that it has been known or said by the oil companies in my territory that they were not allowed to give away or lease these pumps.

Q. Since the decrease in the frequency of the experience you have just described have your sales increased or decreased in number? A. In the past two years my sales have increased considerably.

Q. About what per cent? A. Last year I can say it was almost double that of the year before or I mean year before last. And last year was about equal with the year before.

Q. In 19 what? A. I mean 1915—in 1916 it was about double over '15.

Q. 1917? A. 1917 and '18 were about equal. Now wait a minute, let me get that straight. In 1917 it was about double over 1916. In 1918 it was about equal with 1917.

Q. And this year? A. This year of course we have had some labor trouble. My record has been, counting that time off, my record has been larger than the previous year.

Q. There was a period during this year when you did not do any business at all? A. Yes, sir. 686

Q. That was due to the labor troubles back in the home office? A. Yes, sir. I don't believe, however, that that was altogether on account of the oil company's business. I think it was the general trend of business all over in all lines.

Q. What part of it do you think would be due to the general increase? A. You mean percentage of business?

Q. Yes; percentage of increase? A. That would be hard to state because last year I felt it was a better factory year, that factories were increasing better than garages. This year has been a better garage year. 687

Q. You have been with the Bowser concern for about five years? A. Yes, sir.

Q. When you began with the S. F. Bowser Company in the Ohio territory was there a general practice in the whole trade of leasing and loaning oil tanks and pumps to customers? A. Yes, sir.

Q. To what extent as compared with 1918 or 1917 had this practice developed? A. Do you mean to what extent did they practice it then as proportionate with what they do now?

688 *Emanuel Steinhauser, Direct*

Q. Yes, or did in 1918? A. In the earlier period the proportions were probably sixty or more per cent where they had offered it. This year I have only found two. Does that answer your question?

Q. When did the practice of leasing and loaning oil tanks and pumps begin if you know? A. It had begun before I came into the territory.

Q. When you came into the territory what per cent of oil tanks and pumps in your territory were owned by the retailers and what per cent were leased and loaned? A. Well, I said it was about sixty per
689 cent which were those where I would have had opportunities to sell where I missed the contract. I believe that applies.

Q. (Interrupting.) You have not necessarily answered the question. I am directing your attention to the pumps that were at that time installed when you came with the company or shortly after that or during that early period of salesmanship; of the pumps that were actually installed in the various retail places what per cent of such pumps had been sold outright to the retailers and what per cent were being used by the retailers on such contracts? A. You mean generally over my territory?

690 Q. I mean generally over your territory. A. I should say more than half of them were leased.

Q. Has that per cent increased or decreased? A. It has decreased.

Q. A less per cent is leased today than was then? A. Yes, sir, a great many of them have been taken out.

Q. What per cent of them are owned now by the retailers? A. That question would be hard to answer unless I could generally get my mind over the territory because in some cities they are still using

a good many of them. Some they are not. I will give you for instance in the City of Canton and Akron; they are operated mostly by filling stations, service stations. In the City of Alliance and Massillon they are controlled mostly by the oil companies who lease pumps. I would say in the rural districts that perhaps from sixty to seventy per cent of them are leased.

Q. In the cities of more centralized areas, larger cities, a larger or smaller per cent of them? A. Very much smaller.

Q. There the pumps that are actually distributed 692
are very largely owned, are they, by the various distributors or retailers? A. They are very largely owned by the retailers or filling stations are operated by the oil company.

Q. What would you say as to the general number of oil tanks and pumps in actual use today as compared with the time when you went into the service with Bowser & Company? A. You mean altogether those leased and sold?

Q. All those in use today as compared with all those in use at the time you went into service? A. I would say they are about equal.

693

Judge Chamberlin: I do not think he understands the question, Mr. Zechiel.

The Witness: As I understand the question you want to know what per cent of pumps and tanks are being used today as compared with those that were being used in my territory, that is, garage dealers that are using pumps and tanks, that were using them when I went in there.

Q. That was the intention; or to put it in a different form, if all over your territory there were installed five hundred pumps when you went into serv-

694 *Emanuel Steinhauser, Direct*

ice with the Bowser Company, compared with that five hundred how many would there be, the same number or more or less? A. There were a few of them taken out on account of filling stations.

Q. Then you would say there are slightly less pumps in use today than at that time? A. Yes, sir.

Q. You are speaking now of 1915? A. My early experience with the company. Of course in answering that question, when I said that, I was considering too that there was new business started. What I mean is there are more garages in my territory now
695 than there were when I first went in. In other words it is hard for me to make that comparison because when I first started with the Bowser Company my territory consisted of three small counties, Carroll, Harrison and—

Q. How long have you been in these counties? A. For the past two years.

Q. About how many pumps do you sell on an average in a year? A. You mean gasoline pumps?

Q. I mean oil pumps and tanks—equipments I believe you call them. A. That would be hard to state because my orders are from one to probably twenty or more tanks to an order. My orders this year so
696 far have amounted to about one hundred and thirty.

Q. Now that includes what you sell in job lots? A. That includes everything. What do you mean by job lots? Large quantities?

Q. Yes. A. Yes, sir.

Q. How many pumps do you sell on an average which you sell to private retailers one at a time? A. With the exception of factory business, all of my business is to garages and retailers, people who are starting private filling stations.

Q. You spoke of selling job lots; to whom do you sell those? A. To factories. What I mean by selling

larger quantities of tanks is a battery of them perhaps in a factory that is establishing a central oil house or something like that.

Q. How many pumps in your best judgment have you sold during this time that were installed in garages and for general retail business? A. In what time?

Q. In the year, in this last year. I am not meaning 1919. A. 1918.

Q. This is sort of an off year? A. That would be hard to estimate because my last year's business was more than fifty per cent factory business. 598

Q. Was that about half the number or a little less than half the number as you stated as being about the number you had sold in the year? A. To the garages.

Q. To the garages? A. And retail dealers of oils and gasoline.

CROSS-EXAMINATION by Mr. Holliday:

Q. Mr. Steinhauser, do I understand you to say that from your observation the number of pumps in use for the selling of gasoline has not increased since 1915? A. That question was not altogether clear. I 699 cannot say that they have not increased. I say that there has been new business starting and of course where there has been new business started there have been new pumps sold. I am not speaking of my own sales. I am speaking of all pumps and tanks sold in the territory. That is what you wanted, wasn't it?

Q. Yes. Isn't it a fact that there was an enormous increase in the use of underground tanks and pumps for the retail sale of gasoline during the year 1915? A. I cannot say to that because 1915 was my first year with the Bowser Company.

700 *I. M. Camden, Direct*

Q. Where were you in 1915? A. In Carroll, Harrison and Belmont Counties, a country district, principally.

Q. Country district with small towns? A. Yes, sir.

Q. Have you in the last year heard any talk among the garage men about some federal law or federal authority prohibiting the leasing of curbstone pumps, curbstone outfits? A. Yes, sir; where they have applied to an oil company for one on a lease plan they have been told that there was such a law.

701 Q. There has been considerable talk about that among the garage men, has there? A. Except to say that there was such a law and that the oil company would not lease it.

Q. Have you heard any gossip among the garage men that the Standard Oil Company was to blame for this federal law or federal order? A. No, sir.

I. M. CAMDEN was thereupon called as a witness, and being first duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

702

Q. You may state your name and address. A. I. M. Camden, Sarahsville, Ohio.

Q. By whom are you employed? A. S. F. Bowser, Fort Wayne, Indiana.

Q. How long have you been in the employ of that company? A. Since June, 1914.

Q. How much of that time have you spent in an Ohio territory? A. All of it.

Q. Have you always been in the same territory in which you are now? A. Yes, sir.

703

Q. What is the territory over which you go? A. Noble, Guernsey, Perry, Morgan, Coshocton, Harrison—Harrison just this last year.

Q. During your experience as an employee of the Bowser concern have you ever solicited customers or prospective customers for the sale of oil tanks and pumps and been refused such business, the customers or prospective customers stating that they would not buy because they were able to secure such equipments from oil companies for a nominal consideration? A. Very few.

704

Q. Have you ever lost any business because of that practice of leasing and loaning oil tanks and pumps? A. I might have lost one or two orders but it was orders that I didn't care much for, on account of the financial standing. The oil companies on the leasing proposition down there have never been active in my territory.

Mr. Rubrecht: You say they never have been?

The Witness: No, sir.

705

Q. What per cent of the pumps that had been installed and were operated at the time you became an employee of the Bowser Company were privately owned and what per cent were under lease contracts? A. I would have to say in my territory where I work now and have been at this time ninety-five per cent of it is sold outright, privately owned.

Q. Is that true now? A. Yes, sir.

Q. What is the general population of the counties and towns in your territory? A. Well, from villages of fifty people up to thirty-five thousand. Zanesville is the largest town.

Q. How many cities or towns do you have above ten thousand? A. Just about three.

Q. And is what you say about the per cent of owned outright pumps by retailers true of the towns above ten thousand or cities above ten thousand as well as the rural communities? A. Just about the same. In my territory we did not have a service station installed until this last six months and we have been off on a strike—one in Zanesville owned by the Standard Oil Company.

Q. How many pumps do you sell on an average in a year? A. Just about one hundred orders a year.

Q. Is that orders for pumps? A. General line.

707 Q. About how many pumps do you sell? A. Just about one hundred pumps a year.

Q. Oh, about one hundred pumps a year; has that been your average for the last three or four years? A. Well, in 1917 and '18, I was off through sickness; an average of about three or four months each year, and this year I have been off on account of a strike.

Q. What would you say about the relative sales made there during the other years than this year? A. Fifteen and sixteen was my good years.

Q. You sold less in '17? A. I did not work all the time.

Q. About how many did you sell during the time
708 you worked? A. Well, I suppose I sold each one of those years about fifty outfits for the time that I worked in each year.

Q. When you were selling, the year you sold about one hundred outfits, about what per cent of the total installation of oil tanks and pumps did you sell; I mean the total in your territory; in other words what per cent of the business did you get? A. Well, I got I expect, seventy-five per cent of the business. At that time I had no competitors you might say. A fellow would just drop in now and then—no regular men in the territory with me. They won't stay there.

Q. Did you sell oil tanks and pumps in towns of below 1,500 population? A. Yes, sir.

Q. What was the average minimum size then in which you sold oil tanks and pumps? A. Well, in the neighborhood of four to seven hundred.

Q. Do you still sell such equipments in that size towns? A. Yes, sir.

CROSS-EXAMINATION by Mr. Taber:

Q. The country that your territory is in is a very hilly country? A. Yes, sir, rural districts and very 710
bad roads the year around.

Q. And the roads are bad throughout the whole territory? A. Yes, sir.

W. S. CAMDEN was thereupon called as a witness and being duly sworn testified as follows:

Direct-examination by Mr. Zechiel:

Q. Your name and address? A. W. S. Camden, Sarahsville.

Q. By whom are you employed? A. S. F. Bow- 711
ser Company, Fort Wayne, Indiana.

Q. How long have you been with that company? A. About four years.

Q. What relation is the Camden who just testified to you? A. Brother.

Q. He is your brother? A. Yes.

Q. Do you sell in the same territory your brother sells? A. No.

Q. What is the territory over which you sell? A. The southern part of the state.

712 Q. Could you name the counties? A. Gallia, Jackson, Vinton, Meigs, Athens, Hocking, Washington and Monroe.

Q. How long have you been in this territory? A. About four years.

Q. What per cent of the oil tanks and pumps that were installed at the time you began your service with Bowser & Company in this territory were leased and loaned and what per cent were owned outright by the retailers? A. All of them were owned that I know of.

713 Q. What size towns do you have, or cities, in your territory? A. Oh, from fifty people up to twenty-five hundred.

Q. Twenty-five hundred do I understand you to say? A. Twenty-five thousand.

Q. How many cities are there above ten thousand in your territory? A. Four, I think.

Q. What is the average size or the minimum size of towns in which you sell these pump equipments? A. In all sizes down as low as the cross road stores.

Q. Where there are only a few inhabitants? A. Yes, sir, I have a lot of them in my territory.

Q. What per cent of the oil tanks and pumps in
714 your territory today are owned outright by retailers and what per cent are under lease contracts? A. I think they are all owned outright that I know of but two.

No cross-examination.

716

J. E. HOMSHIRE was called as a witness, and being duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. Your address? A. Albion, Indiana.

Q. By whom are you employed? A. S. F. Bowser and Company, as a special salesman.

Q. Where is your territory? A. I have no regular territory.

Q. Do you sell in the Ohio territory? A. I have some this year.

Q. Did you sell any prior to this year? A. Oh, yes, I have worked in Ohio each year.

715

Q. For how long? A. For twelve years.

Q. What has been the general territory over which you have worked? A. I have worked with other men and I have worked in all parts of Ohio.

Q. From your experience in the sale and distribution of pumps are you acquainted with the oil tank and pump industry as it relates to retailers of gasoline throughout the State of Ohio? A. I am.

Q. How long have you been acquainted with that situation? A. I would judge about five years, since 1915, anyway; four or five years.

Q. In your experience as a salesman for S. F. Bowser & Company, what has been the average minimum size town in which you have sold such equipment? A. From one store up, a town of one store and one house.

717

Q. Are you sufficiently familiar with the general situation over the State of Ohio— A. (Interrupting.) I am.

Q. Just a minute. A. Excuse me.

Q. To make a statement as to the general practice of oil tanks and pumps in the state that are leased and loaned, as compared with those that are owned out-

718 *J. E. Homshire, Direct*

right by various retailers of gasoline? A. Not in the state; in certain localities.

Q. In the localities with which you are acquainted, will you give the locality generally and also the per cent of pumps that are owned outright by various distributors—retailers? A. In the locality in and around Toledo—that is where I have worked lately, in the last year, that is in the last six months—I would judge there was 80 per cent owned by the oil companies.

719 Mr. Taber: How many?

The Witness: 80 per cent in and around Toledo, in that territory, the surrounding counties in Ohio.

Q. Go ahead with the rest of them that you are acquainted with, the rest of the territory you are acquainted with. A. I used to work in Darke County; that is over around Greenville.

Judge Chamberlin: He says that 80 per cent of the tanks are owned by oil companies. That is not responsive to the question.

(Question read.)

A. Does that apply to the curb pumps?

720 Q. I am speaking of curb pumps. A. I will stand by my assertion that at least from 75 to 80 per cent are owned by the oil companies, in my judgment.

Q. By the oil companies, are you referring to the retailers or the wholesalers? A. I am referring to the wholesalers, that is, the oil companies.

Q. When you say "owned by the oil companies" you mean that they are installed under lease and loan contracts? A. Yes, sir.

Mr. Zechiel: Is that clear then?

Judge Chamberlin: Yes, sir.

721

Q. Now, with respect to the other territories? A. In other territories—I go into territories where there is no—where they are all owned by individuals, the business man.

Q. What territories have you in mind now? A. Territories in Indiana and Michigan.

Q. I am not speaking of those territories; I mean Ohio. A. Excuse me. I worked some down in around Sarahville where Mr. Camden lives. We didn't find that competition in that territory.

Q. Are you acquainted with any other territory in Ohio? A. I am not familiar with it, not where they are not operating. 722

Q. What do you find about the Michigan territory? A. Well, I don't find much of that work gong on.

Q. You mean that there are not many leases and loans in the Michigan territory? A. Not as much, no, sir.

Q. What part of Michigan are you referring to now? A. I work in all parts of Michigan.

Q. That is true throughout the state? A. Yes, sir.

Q. How about Indiana? A. Not so much; very little.

Q. There are leases and loans in Indiana though, are there? A. I think there are but very little—very few. 723

CROSS-EXAMINATION by Judge Chamberlin:

Q. Mr. Homshire, you say that there are about 80 per cent of the curb pumps and tanks in the Cleveland district— A. Toledo district.

Q. Oh, Toledo district? I understood you to say the Cleveland district. A. No, I did not mention Cleveland.

724 *J. E. Homshire, Cross*

Q. Well, then, in the Toledo district, that are owned by the oil companies and leased to the distributors? A. In my judgment, yes, sir.

Q. How did you form that judgment? A. I formed that judgment by calling on the garage trade.

Q. Did you make any particular note at the time that you called? A. Well, not exactly, but it was an every day occurrence.

Q. Did you ascertain from the garage man whether in leasing those pumps and tanks they were paying a nominal rental or no rental, or a compensatory rental?
725 A. A great many of them claimed they were paying one dollar a year.

Q. All of them paying a dollar a year? A. I didn't say that—a great many of them.

Q. What proportion of them? A. I should judge at least one-half of them.

Q. How did you arrive at that; did you make a notation? A. Not exactly, no, sir.

Q. Did you call on all of the trade in the Toledo vicinity and Toledo? A. I called on the trade outside of the City of Toledo, in the counties.

Q. This statement does not apply to the City of
726 Toledo? A. No, sir, not in the City of Toledo.

Q. Now, what territory outside of the City of Toledo did you visit? A. I visited the counties surrounding Toledo.

Q. The counties surrounding Toledo? A. The counties, smaller towns.

Q. That is all within the County of Lucas? A. I visited Lucas, Ottawa and Fulton.

Q. Defiance? A. Defiance and Hancock.

Q. Wood? A. Hancock.

Q. Hancock? A. Yes, sir, and Putnam.

Q. Allen? A. How?

727

Q. Allen County? A. No, not Allen County, not this year; no.

Q. Not this year; how many garage men do you visit? A. I would visit every garage man in the county.

Q. How many would that be? A. How many in a county? That would be pretty hard to tell.

Q. You must have kept some sort of account of it? A. Yes, sir, by the pumps and what the garage men told me.

Q. How many pumps were in the county? A. I didn't keep an accurate check of them. I said in my best judgment. 728

Q. What? A. I said in my best judgment.

Q. In your best judgment? A. Yes, sir.

Q. Then you don't want to say to the Commission that there is any accuracy in that statement? A. I say in my best judgment.

Q. You did not form that judgment as the result of keeping any check or any account? A. I make a daily report on every pump I call on—every customer, and I form that judgment from this daily report.

Q. Daily report to whom? A. To my company on what style pump I find in the garage, that is, what make of pump? 729

Q. Did you report also the manufacturer? A. Just give the name of the pump manufacturer.

Q. The name of the pump? A. That is the manufacturer of the pump—the name of the pump.

Q. Were there a larger or lesser number of Bowser pumps than other pumps? A. Lesser.

Q. What was the purpose of this examination of this territory by you? A. That is my business.

Q. Was there a particular purpose? A. Yes, I have to make a report on every man I call on.

730 *J. E. Homshire, Cross*

Q. Were you asked by the Bowser people to make— A. (Interrupting.) To make a report and give the names of different pumps that are used.

Q. You are a little bit fast? A. All right; I will wait.

Q. Were you asked by the Bowser Company to make an investigation of this particular territory, and report? A. No, sir, no.

Q. How? A. No, not at all.

Q. How did you come to make that investigation? A. The simple fact is this, that we could not
731 keep a man in this territory on account of this condition and they sent me in there to do the work in that territory, and that is the way I found it out.

Q. Did the other companies that were supplying the trade in this territory object to this method, or were they rather in favor of this method of doing business? A. What companies? I don't know anything about any other companies.

Q. You didn't make any investigation as to their attitude? A. Why, sure not. It is my company—

Q. But you found the other companies were selling more pumps than the Bowser people? A. I didn't find that the other companies were selling more pumps
732 than the Bowser people.

Q. You found— A. I found that there were more leased, that the principal business was done in leasing pumps; that the oil companies were just as active as the salesmen in getting these leases.

Q. My question is, did you find more pumps manufactured by other companies than were manufactured by the Bowser Company under lease? A. I really think I did, but I am not sure as to that.

Q. You are not so certain about that—as to the number? A. No, sir.

Q. Wasn't that a more vital question to you? A. No, not at all.

733

Q. Not at all? A. No.

Q. In what way are you compensated, by commission or salary? A. Your Honor, do I have to answer that?

Examiner McCorkle: You need not tell the amount. He doesn't ask the amount. Just tell him how.

The Witness: I am a salaried man.

Examiner McCorkle: You have no desire to know how much salary he gets?

Judge Chamberlin: No, I don't care what salary he gets. I hope he is getting a good one.

734

The Witness: I hope so, too; I need it.

Examiner McCorkle: Well, everybody needs it.

Q. Do you feel your company was being put to any special disadvantage by the purchase of pumps by oil companies from you and disposing of them under lease to the distributors? A. Do I feel they were put to any disadvantage?

Q. Yes. A. Well, I never gave that a thought, simply because we didn't—I wasn't interested in that at all—see?

Q. What is your judgment in regard to that now? A. I don't know as they was put to any disadvantage; I couldn't say that they were or were not. I wouldn't like to answer that.

735

Q. You take orders, do you? A. Yes, sir.

Q. Do you try to sell to the oil companies? A. No, I never canvassed the oil companies; that was out of my line of business.

Q. Why didn't you? A. Simply because I had no right to. I called on nothing but simply the general line trade.

Q. Are they in a part of the general line of trade? A. My job was the garage trade, the store oil trade,

736 *J. E. Homshire, Cross*

paint oil trade—I had nothing to do with the oil companies, never sold an oil company a pump.

Q. Why was that? Because the larger trade was reserved to the company itself? A. Well, not exactly. My business was working a great deal with other salesmen. That is before the war, you understand, when we were putting on new men and we had nothing to do with the oil companies.

Q. When you are working with other salesmen do you ever suggest to them, or did you yourself make the suggestion that they should make the suggestion
737 to distributors that they might apply to oil companies? A. No, sir.

Q. To get pumps? A. No, sir.

Q. Never did that? A. No, sir.

Q. You were interested merely in making the sale direct? A. Direct, that is, in the general trade. That was my business.

Q. Isn't it a fact, Mr. Homshire, that the Bowser Company reserves certain lines of trade to itself which they do not permit the agents that you instruct to solicit? A. They have factory men and they have general line men.

Q. General line men? A. Well, yes. I work with
738 the general line men. We don't call on the factory trade you see—general line men.

Q. Just what do you mean by factory men? A. Why, a factory man is a man that calls on the factory trade.

Q. What is the factory trade? A. The factory trade is large factories in each town.

Q. Does that include the oil companies? A. I don't know whether it would or not; I never had that trade.

Q. Do you mean by that that they sell in quantities, more than one? A. I mean this, that they

quite often furnish a factory with a large number of tanks; they would pick out their factory. It takes a factory man to handle that line. 739

Q. How about the wholesalers? A. The wholesalers?

Q. And jobbers? A. I never call on the jobbers.

Q. Do they? A. Not that I know of, not in my judgment.

Q. Doesn't the Bowser Company sell to jobbers? A. Not in my judgment they don't.

Q. Would they sell to oil companies on the same terms as to the factories? A. I don't know; I never sold them. 740

Q. Haven't you any information in regard to that? A. No, sir, I haven't.

Q. Have you ever heard that discussed with the Bowser people? A. No, sir.

Q. Do you meet with the executives of the Bowser Company? A. No, sir, no, I don't, not frequently.

Q. From whom do you receive your instructions? A. Why the general manager of my district.

Q. Have you ever talked to the general manager about this other trade? A. About what?

Q. About the factory trade and large quantity trade? A. No, sir. 741

Q. Have you ever had any authority to make any different prices or discounts? A. No, sir, none whatever.

Q. None whatever? A. No, sir.

742 *B. N. Milliron, Cross*

B. N. MILLIRON was thereupon called as a witness, and being duly sworn, testified as follows:

Direct-examination by Mr. Zechiel:

Q. What is your address, Mr. Milliron? A. Waldorf Hotel, Toledo, Ohio.

Q. By whom are you employed? A. S. F. Bowser & Company.

Q. How long have you been employed by that company? A. Between nine and ten years.

Q. During that time where was your territorial
743 experience? A. Varied; about twenty-five states.

Q. How long have you been working in the State of Ohio? A. Partially for the last four years.

Q. You mean part of your time for the last four years? A. Part of my time, because the majority of it up to the first of July comprised factory work in cities in Ohio, Indiana and Michigan.

Q. What is your line of employment with S. F. Bowser? A. My line of employment up until about five weeks ago was engineering work in factories alone. Since the labor conditions in our factories have been as they are, I was asked to take five counties between Springfield and Lima to fill in the gear
744 on the general line of work.

Q. You are or are not acquainted with the general distribution of oil tanks and pumps among retailers of gasoline in the trade generally? A. Only from observation and what I have come in contact with in the last four or five weeks.

CROSS-EXAMINATION by Mr. Taber:

tities than one or two tanks to a customer? A. Yes, my orders run anywhere from a thousand dollars to

fourteen, fifteen and twenty thousand dollars, comprising a number of them.

Q. The number of tanks you sell, the number of outfits to any one party? A. The highest number I sold to any party was 112.

Q. What kind of business was that? A. That was a factory at Nitro, West Virginia, government plant.

Q. That was a government order; have you ever sold to any of the oil companies anywhere? A. Personally?

Mr. Zechiel: I think I shall have to object 746
to the question.

Mr. Taber: He said that he sold in factory quantities which the former witness defined as being business aside from individual sales.

Mr. Zechiel: If you want to make him your witness, I cannot object, but you are cross-examining him upon a subject now which I did not touch in my cross-examination.

Mr. Holliday: Have you a rule before the Commission that we cannot cross-examine as to any matter except that which you have brought out on direct?

Mr. Zechiel: We follow that rule. You 747
can make him your own witness.

Mr. Taber: We are not making him our witness.

Mr. Zechiel: Then I object.

Examiner McCorkle: I think we have been so liberal in wanting to get at the bottom of this thing that we ought to allow most any question that will throw any light on it.

Mr. Zechiel: On that theory, I withdraw my objection.

The Witness: I haven't handled oil companies directly; I have called in several instances.

748 *B. N. Milliron, Cross*

Q. Have you ever made quotations to any of the oil companies? A. I have made quotations on special appointments, on the advice of my general manager, or district manager.

Q. That would include an order for a large number of outfits, wouldn't that? A. Any number.

Q. Now, you may state what the terms were that were offered? A. The terms are the same to one and all, from an individual buyer, and factory buyer or oil company buyer. The terms are open and above board and an equal price asked of everybody.

749 Q. What is the discount allowed? A. The discounts vary according to the number of equipments purchased.

Q. On an order, say of twenty-five outfits, what would be the terms of the discount? A. Am I compelled to answer that?

Examiner McCorkle: What do you want to know the discount for?

Mr. Taber: I want to show the manner on which the discounts are allowed on quantity sales; the conditions under which they are allowed, as I understand the theory.

750 Examiner McCorkle: We don't want you to give away any trade secret.

Mr. Taber: It isn't any trade secret because it is open competition.

Examiner McCorkle: If it is an open method I don't see why it should be objected to.

The Witness: On five pumps anybody is entitled to five per cent. From five to fifteen outfits they are entitled to ten per cent. From fifteen to forty-nine outfits they are entitled at present to fifteen per cent and all quantities ranging higher than that is figured at the time.

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Q. Figured at the time, if an order was given to you for twenty-five outfits to be delivered through the year, what is the manner in which the discount would be computed and when would it be allowed? A. They sign a quantity purchase arrangement, if I can give you that exactly from memory. They agree to buy so many pumps. They are to obtain a discount. I cannot say definitely now without looking it up, whether they are entitled to that discount in the beginning or whether they are entitled to it after all the outfits have been furnished. I couldn't say as to that.

752

Q. Isn't it a fact that the quotations at the end of the year—if they have taken out that many that they send them their rebate for the excess that they have paid on the first few deliveries; isn't that correct? A. I couldn't say off-hand on that question exactly.

Q. You have made those quotations? A. I have made several of them, but the discounts on the ones I have made have been allowed because the quantity ordered at that time justified the discount which was to be received.

Q. Were they all for one shipment? A. Every one I have sold have been for one shipment.

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Q. If a company placed an order with you for its requirements for the year, then if they had purchased, say twenty-five, at the end of the year, they would get a rebate to bring their discount to that point, wouldn't they? A. As I stated before, every order I have taken, the number of equipments ordered have been shipped at the time to justify the discount which they received. I said before, I couldn't say off-hand without looking up one of the contracts.

Q. You haven't one of them with you, have you? A. I haven't.

Q. I will ask you if it is not a fact that you have lost some orders by that requirement of only giving

754 *B. N. Milliron, Cross*

the discount at the end of the year in the form of a rebate and the other pump companies were allowing a discount at the time that the purchase was made upon each individual shipment of that company? A. I have lost business to other companies, which everybody does. I don't know why; they have never told me exactly why they purchased from other companies, whether it was on that ground or not. We don't get all the business; we don't expect to.

755 Mr. Zechiel: I notice that Mr. Romer does not seem to be here. Mr. W. E. MacEwen, of Cleveland, Ohio, has been subpoenaed to appear here. He hasn't appeared. I am not certain that I want to take Mr. MacEwen's deposition, but I should like to reserve the right to do so, and with that reservation of right, that completes the Commission's case.

Examiner McCorkle: Mr. Romer isn't here, and you don't expect him?

Judge Chamberlin: Mr. Zechiel, in reserving this right to take the deposition of Mr. MacEwen, do you expect to develop testimony from him aganst any of the respondents?

756 Mr. Zechiel: You mean specially?

Judge Chamberlin: No, generally. That is, on the general question.

Mr. Zechiel: On the general question. Mr. MacEwen testified before the Commission in Washington and I understand he is out west and perhaps has not received the subpoena. At this moment I am not certain that I shall want to take his testimony by deposition, but I rather think I shall want to do so.

B. A. MATTHEWS was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct-examination by Mr. Holliday:

Q. State your name and address? A. B. A. Matthews, 595 East Broad, Columbus.

Q. What is your occupation, Mr. Matthews? A. I am a special agent and director of the Standard Oil Company of Ohio.

Q. How long have you been employed by the Standard Oil Company of Ohio? A. Thirty-five years. 758

Q. You in that time have been in the marketing department of the Standard Oil Company and been familiar with its operations throughout the State of Ohio? A. Yes, sir.

Q. Mr. Matthews, I want to direct your attention to two general subject-matters: first, the economical features of the present condition in the marketing at wholesale of gasoline in the State of Ohio under the prevailing custom of leasing and loaning curb outfits for a nominal consideration; and secondly, the economical features which in your judgment would result from any order which caused the system of leasing and loaning such outfits for a 759 nominal consideration to be stopped. Now considering then first the present economical situation will you state to the Examiner in a general way the economical features of the present situation and in doing so contrast them with the condition that existed prior to the adoption of this custom of leasing and loaning? A. One of the first problems of the oil industry has been to keep pace with the rapid increase in the consumption of gasoline. In the State of Ohio in about four years automobile registrations have gone up from about two hundred and fifty thou-

sand to over five hundred thousand. The companies so far have kept pace in the production of gasoline. Then the next problem was to provide facilities for handling and marketing the increase. The conditions of marketing gasoline four or five years ago were too crude to take care of the present largely increased output and the large number of automobile owners. At that time nearly all of the gasoline dealers sold oil from above ground tanks, some made of tin, some of galvanized iron, some had a faucet in the bottom, some a pump at the top, some were located in base-
761 ments, some were located in the store rooms, some were located in outside sheds and some on the ground. It was a very crude method for the dealer to handle gasoline and it was a great fire hazard. The problem of marketing, of getting gasoline to the dealer was handled by the oil companies building more stations and putting on more tank wagons and trucks so as to get it to the dealer. Then the problem was to furnish facilities so that the automobile owner could get gas conveniently and it is manifestly evident in a city like Columbus with so many automobiles as we have here they could not load on the curb, and in a city like Columbus it has developed from the tank I re-
762 ferred to to the curb pump. Then the next development in the large city was from the curb pump to the service station. Now in the natural evolution of the business it went from these insecure tanks to leased pumps. This to start with took care of the cities and at present takes care of the rural districts and the smaller cities, the leased pump. Now, you might say, "Why was it necessary to lease the pump?" For the simple reason that enough dealers could not be obtained to buy pumps. We could afford to buy pumps Therefore, to provide facilities the oil companies con-

ceived this plan of leasing pumps to dealers who could not afford to buy them as a rule. In some cases they were leased to people who could afford it because they preferred the lease plan. But as a rule it extended and made more convenient the filling of a private automobile so that they could fill up conveniently whenever they ran out.

Now, I will give you a few reasons quickly or in as few words as possible as to the reason that I think this is a good practice. In the first place it identifies the company's product. Most manufacturing concerns who put out trade-marked goods put them out in packages and the trade-mark is on the package. Therefore, there can be no deception. You cannot trade-mark gasoline. There is no way of putting it up in a package so that it can be trade-marked as it is pumped directly into an automobile. Now, the only method of trade-marking that gasoline is to provide a pump with a trade-mark on the pump and with the understanding and agreement that no other gasoline will go through that pump than the gasoline that is represented by that trade-mark. Then when a company advertises a particular brand of gasoline the customer who sees that trade-mark on a pump and knows that that particular gasoline is coming from that pump will not be deceived thereby. It is absolutely the only way that I know of trade-marking gasoline, that is, practical way. This installation of the pump in the first place is considered as an investment not an expense. It is just as much of an investment, of invested capital, as the tanks at the distribution station, for the reason that if for any reason this tank and pump are taken out it can be placed elsewhere. Therefore, it has a value as an investment.

Now, this investment pays a good interest from an advertising standpoint and from the standpoint of

protecting the trade-mark. It pays a substantial interest on the investment. As I said before it protects the consumer against deception and gives communities convenient places for filling. And one of the special advantages is in reducing the fire hazard. Companies with sufficient money, garages or dealers with sufficient money, true, can buy the right kind of equipment. But the average dealer does not have sufficient funds to put in this equipment, therefore, when we install or when any oil company installs this equipment and takes out a poorer equipment it is im-
767 proving the fire hazard

Now, I am in favor of this practice being continued for the reason that if it were by order discontinued—

Q. (Interposing.) Just a moment, Mr. Matthews, before you come to that; let me ask you whether, considering these curb outfits as an investment, as you do, there has been any other advantage accruing to the oil companies in the matter of expense in delivering gasoline and in soliciting orders for gasoline? A. Yes.

Q. Will you explain that? A. It has decreased the expense of the delivery for the reason that when the oil company makes an installation it is generally a
768 considerably larger installation than they had previously had in. We usually put in as large a tank as the situation will warrant, and whenever we can make a large pump instead of a small one it decreases the expense of delivery.

Q. How does the storage capacity and its location since the adoption of this custom compare with the storage capacity and its location before the adoption of that custom? A. Well, the storage capacity has increased and the locations are more numerous under the present plan.

Q. What has been the effect of the adoption of this custom and the installation of numerous pumps at the curb; what has been the effect of that upon the habit of the automobile owner to store gasoline in their home garages? A. Quite a large per cent of the automobile owners who formerly had insecure and inexpensive tanks at their homes have abandoned them and now go to the curb pumps on account of more convenient filling and less fire hazard around their homes and less leakage.

Q. Would you say then as a result of this condition there has been a shortening of the haul and an 770
increase in the amount of gasoline that is carried per mile? A. I would not say it has decreased the length of the haul. It has made the stops less frequent and the deliveries larger.

Q. Yes. Go on where I interrupted you. A. There is only one other point that I had thought of here and that is that I am in favor of this practice of leasing pumps continuing for the reason that in my opinion if it were stopped a worse condition would follow.

Q. It would? A. Such as the agency plan and installation plan of sales and many other subterfuges would undoubtedly be adopted especially by the smaller 771
companies. The larger companies probably would not take as many chances, and in that case they would be forced to put in filling stations to take care of the situation in all towns over, say two thousand population.

Q. It is complained of, Mr. Matthews, in regard to the present system of leasing and loaning tanks for a nominal consideration that that tends to freeze the industry, to make it hard for smaller and new wholesalers to compete. I will ask you whether that is in your judgment correct and whether in your

772 *B. A. Mathews, Direct*

judgment an order to cease and desist if carried out would thaw or would tend to freeze the competitive conditions of the industry? A. My opinion is that the leased curb pump has been very beneficial to the small jobber, more so than the larger companies. It gives them a chance to work in.

And I think there has been just as generous a flow of competition under the present system as under the old and in fact the competition has grown stronger under the present system than under the old.

773 Q. I will ask you whether or not the garage men and retail dealers who are leasing pumps and outfits for a nominal consideration in your observation are changing their source of supply from time to time under this present system? A. They frequently do.

Q. I will ask you whether or not there is competition among the wholesalers in procuring the patronage of retailers who are using leased outfits by persuading them to throw out the leased outfit which they have and put in a new outfit of the new competitors? A. Very strong competition

774 Q. I will ask you from your experience in the industry, before the method of leasing or loaning for a nominal consideration came to be practiced, whether or not the retailers were accustomed to buy more fairly constantly from one source of supply, and ask you to describe that condition? A. I think they bought from one source of supply under the old plan as much as they do under the present. I do not believe that there are any more changes under this plan than there were under that. Dealers are continually changing from one company to another.

Q. You mean then that while a garage man would occasionally buy a small quantity from someone who passes by that for the main bulk of his supply he relied upon one source of supply even before this leasing system came into effect? A. Largely, yes, largely.

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Q. There was not, however, under that system any certainty that there would be no mixture of gasoline with the gasoline of the principal scources of supply, was there? A. No, there was no protection to the consumer.

Q. Assume for the moment, Mr. Matthews, that an order were issued under which all of the wholesalers and jobbers of petroleum products in the State of Ohio should discontinue furnishing pumps and outfits to retailers at a nominal consideration; assume that everybody complied strictly with the spirit as well as the letter of the order; what in your judg- 776
ment would be the effect in regard to competition; would it make competition easier or more difficult for the small wholesaler and the new retailer? A. Why I do not think that that would—I would not think that that would make any special difference in the character of the competition.

Q. Why? A. Well, there would be the same competition in the field and working under the same conditions. I do think that the small competitor under this plan has a wider scope for increasing his business than under the plan that you describe. I think under the new plan, as I said before, it would result in a worse condition on account of the agency pro- 777
osition and long time installations and other subterfuges.

Q. I will ask you what essential difference there would be between a custom of a wholesaler making a retailer his agent and selling the wholesaler's gasoline exclusively in a tank furnished by the wholesaler and the present system of leasing or loaning for a nominal consideration? What, if anything, is the essential difference between those? Would there be any real economic change? A. The agency plan would give the dealer the same advertising facilities

and the same method of protecting his trade-mark but it would be undesirable and so undesirable that a large company could not afford to undertake it on account of the danger of accidents. If they would appoint agents, in my opinion they would be responsible—the company appointing the agent would be responsible for any accidents resulting from the careless handling of gasoline on the premises. If that is true then the smaller companies might take that chance but I doubt whether the large ones—

779 Q. (Interposing.) I will ask you whether or not from the standpoint of auditing and inspecting, and so forth, that method of handling the gasoline through an agency would be more or less expensive to the wholesaler than the present system of leasing and loaning? A. Yes, more expensive to handle.

Q. Why? A. Because you would have to keep a very careful check on the work of the agent and provide for regular installments. It would have to be run somewhat on the order of a separate station with very careful auditing.

Q. Do I understand you to say in your judgment the larger companies at any rate would not care to enter into any such agency arrangement? What other

780 alternatives then would there be for them? A. One plan would be to sell on the long term installment plan and then they could on the side rebate the amount of the installment payment and in that way practically furnish an equipment free.

Q. In your judgment would the larger companies do that? A. No, I doubt whether they would.

Q. What in your judgment would the larger companies do? A. In my judgment they would be forced to build expensive service stations to take care of the trade.

Q. Mr. Matthews, referring back for a moment to the question of fire hazard which you have mentioned when that cruder method prevailed, which you described of above ground storage tanks, what was the method of pouring the gasoline into the automobile tank? A. Very crude and dangerous method. Into the automobile tank?

Q. Yes. A. I might say first the method of pouring it into the storage tank was crude—a very crude method. The tank wagon driver would draw the gasoline in front of the store into buckets and carry in a funnel, and frequently with the tank in the back 782 end of the store or some dangerous place, put the funnel in the tank and pour it into the funnel. In that case whenever the gasoline fumes reach the air and unite with oxygen it makes an inflammable and combustible material. Then again there is a danger in pouring gasoline from an open vessel into an automobile through a funnel. The fumes are rising and if someone comes along with a match or a lighted cigar there is liable to be a fire. With the curb pumps they put the nozzle down into the tank of the automobile and it is pumped direct and the gasoline does not in any way reach the air. Therefore, there is no danger comparatively—in the comparative use of the 783 curb pump.

Q. Mr. Matthews, in your observation is this furnishing gratis of containers and facilities in connection with the sale of trade-marked goods peculiar to the petroleum industry? A. No, it is not. It is done by other manufacturers. I cannot give you the names of those manufacturers but it is quite a common practice.

CROSS-EXAMINATION By Mr. Zechiel:

Q. Mr. Matthews, would you have any objection to garage people owning all their own equipment as a system of doing business? A. No.

Q. Do you believe that all these good things that have resulted to the trade through the use of pump equipment are the result of the practice of leasing and loaning oil tanks and pumps? A. All of what good things do you refer to?

Q. You have testified to so many of them here I
785 cannot recall them all, but all these that you have testified to? A. Where I have said that they resulted from the installation of leased tanks I stand by the testimony.

Q. That is just the difficulty. I think you have testified that they have been the result of the installation of the tanks. That is not my question. I am asking you whether you think they resulted from the leasing and loaning practice? A. Well, I will answer that by saying that I include loaning under the same plan as leasing. When I speak of leasing I mean leasing and loaning in other words.

Q. I am referring to it in that way. My question
786 is, do all these good things you have described now as being a result of the installation of equipments also all the result of the practice of leasing and loaning pumps? A. I cannot answer your question in that way.

Q. You can answer it any way you please. A. I gave the reasons why I thought that the installation of leased outfits had been a benefit to the industry. I did not say that all of the benefits to the industry had resulted from leased outfits.

Q. That is just what I wanted. What has caused the benefits then, the installation or the lease and

loan proposition? A. They were installed in order to keep up with the procession with the automobile increase—

Q. (Interposing.) I am afraid you are not going to answer my question.

Mr. Holliday: Let him answer.

The Witness: I am answering it.

Mr. Zechiel: Let him proceed and I will object when I do not want any further on that line.

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The Witness: In order to keep up with the procession of the increased number of automobiles it was necessary to provide a number of additional equipments, and where the customer could not afford to pay for them and install them, it was a benefit to the trade to put them in for them under a lease arrangement.

Mr. Zechiel: You have not answered my question. Read it to him.

(Question read.)

Mr. Holliday: I submit, Mr. Examiner, he has answered that question.

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Mr. Zechiel: I will leave it to the Examiner. I cannot do otherwise.

Examiner McCorkle: Let him answer that question.

(Question read.)

A. Both.

Q. Has the installation always been a lease and loan proposition? A. No.

Q. So that the lease and loan proposition was only a cause of the benefit where it was taken in connection with the actual installation; is that true? A.

790 *B. A. Mathews, Cross*

That question is too academic for me. Read it and see if I understand it.

Mr. Zechiel: My questions are all academic, don't worry about that.

(Question read.)

A. The lease was only the cause of the benefit where it was taken in connection with the actual installation? Yes. I would say, yes.

Q. How much experience have you had in the oil industry generally territorially? A. I have been in
791 charge of the general business of central and southern Ohio for twenty-five years.

Q. You have had no experience outside the State of Ohio? A. No, sir, not within the last twenty-five years.

Q. Did you have prior to that time? A. Somewhat, yes.

Q. You are not acquainted with conditions in the vending of gasoline in any other state than in Ohio? A. No, sir.

Q. Are you acquainted with the conditions of the vending of gasoline in the northern part of the State of Ohio? A. Just in a general way as I come in con-
792 tact with it on account of my position as director. I do not have the general management.

Q. Now, can you be a little more specific about that expression "In a general way" for my own information? With what particularity would that be. Examples would do me very well. A. Under the general duties of a director, he has to be familiar with the general conditions of any business.

Q. You mean you are acquained with the actual installations in the northern part of the state and lease and loans? A. Not the details. I could not tell you who has got a pump and who has not.

Q. Do you know whether most of them have leased or loaned pumps or own their own; are you acquainted with that end of it? A. My knowledge comes from reports of salesmen and sub-agent and district managers.

Q. Then you have been a district manager in the northern portion? A. No; I am district manager of the central and southern portions, but I get my information from the department heads.

Q. I am asking though particularly with respect to the northern portion of Ohio. A. I get that from the department manager up there. 794

Q. And from them you have learned as to the conditions with respect to leasing and loaning of pumps generally in that section? A. Generally, yes, sir.

Q. But your immediate observation and immediate experience is in central and southern Ohio? A. Yes, sir.

Q. By that you mean south of Columbus? A. South of Delaware.

Q. Delaware is a county or town? A. Delaware, Ohio.

Mr. Rubrecht: Twenty-five miles north of here.

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The Witness: Twenty-five miles north of here.

Q. When did the practice of leasing and loaning of oil tanks and pumps begin? A. In the years 1913 and '14.

Q. Did your company start that practice? A. Not until 1915.

Q. What was the occasion of your company starting the practice? A. We had to follow the example of our competitors.

Q. You would not have introduced this system on

796 *B. A. Mathews, Cross*

your own experience and observation would you? A. I cannot say as to that.

Q. What do you think now you would have done in that respect from your experience? A. Why, I have no thought on the subject because I have no data to base an opinion on.

Q. You have no idea then whether or not your company would have started this kind of practice? A. I have no way of even guessing at it.

Q. But at the time you only did it because your competitors did it? A. That is why we started it.

797 Q. Prior to that time what had been the practice? A. You mean our practice?

Q. Yes.

Mr. Rubrecht: **He has answered that.**

Mr. Zechiel: I know, but I forget.

A. That is a pretty general question. What our practice was in what respect?

Q. With respect to filling stations and your distribution of gasoline. A. We sold direct to the dealers whether they had pumps and tanks or not.

Q. Did you supply any pumps or tanks up to that time? A. Sure.

798 Q. You sold them how? A. We did not sell tanks but we sold gasoline to dealers who owned tanks.

Q. I am getting at that one fact. You did not deal in oil tanks or pumps at all prior to the time you began leasing them? A. Not to the best of my recollection. I do not remember that we did at that time.

Q. What is your best estimate as to the comparative number of oil tanks and pumps. A. Just let me correct that answer. I recall now that we did sell a few tanks and pumps.

Q. What in your best judgment was the comparative number of oil tanks and pumps in existence at

the time you began the practice of leasing and loaning oil tanks and pumps as compared with today? A. You mean the—let me see if I have any data that I can refresh my memory on that.

(Question read.)

A. It would be a mere guess. I have no data. I would say that there are three times as many now.

Q. At that time they were practically all owned by the private individuals, were they? A. Previous to 1913, when the competitors started to put them in. 800

Q. All right; let's get that period. When your competitors started to put in oil tanks and pumps, what per cent of the present installation had been installed? A. That is what I referred to when I said that I thought that probably three times as many are installed now as during 1913, when they started to put them in.

Q. Now, going back to my question—

Mr. Zechiel: Read it.

(Previous question read as follows):

"Q. At that time they were practically all owned by private individuals, were they?" A. Yes; previous to the starting of the installation of the leased outfits. 801

Q. That is what I am getting at. What per cent do you think of the installations since that time could have been sold to the various retailers of gasoline if you had never practiced leasing and loaning those equipments? A. I would say that the leasing of equipment increased the installations 25 per cent. In other words that there are 25 per cent more installations than there would have been had the leasing proposition not started. Possibly more than that. I think that is conservative.

802 *B. A. Mathews, Cross*

Q. When you testified on direct-examination that four or five years ago the conditions of marketing gasoline were all crude, you were not referring to whatever oil tanks and pumps had been installed at that time, were you? A. Not to the same equipment that we are now using, not to the curb pump and underground tank.

Q. And at that time about a third of the total installations had been made, the total present installations? A. At that time?

Q. Yes. A. I do not know that I made that state-
803 ment, did I, or else I do not understand your question. You mean one-third as many installations in 1914 as in 1919.

Q. Yes. A. It is a mere guess is all. I have no data.

Q. That is about right, isn't it? A. I guess it is.

Q. Now, you say the lease plan was a necessity because of the lack of distributing facilities; is that correct? A. I said that it helped us to keep pace with the rapid pace in automobiles by providing more installations that could not have been provided in case they had to buy them. In other words, the dealer could not afford to buy them in many cases.

804 Q. Did you ever try to sell outright these oil tanks and pumps during the time you were leasing and loaning them? A. Yes, we sell them when they will buy them.

Q. Did you ever have anybody refuse to buy one because as he stated his competitor of yours would install one for nothing? A. Yes; we have had them refuse to buy them and have had them refuse to lease from us because a competitor offered to put in an installation.

Q. Now, do I understand you to say that you think there would be some very bad results coming

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from an order of the Commission to cease and desist the practice of leasing and loaning oil tanks and pumps for a nominal consideration under tying contracts? What were those bad results? A. Well, it is the agency plan which some of our operating members—

Q. (Interposing.) What makes you think they would go into the agency plan? A. Because they would resort to some plan to secure trade and to provide proper facilities for people to market gasoline. They would either take the agency plan or some other plan which might be objectionable. They would resort to some subterfuge.

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Q. Why don't you think they would sell pumps and make a profit out of it? A. Because a number of the small dealers cannot afford to pay for them.

Q. As I understand you you think it is the duty of the oil companies to underwrite small retailers? A. It is not their duty but it is a profitable investment.

Q. Suppose the Commission were to limit its order to only such installations as were necessary because it was impossible for the small retailers to buy; what objection then would there be to that kind of an order? A. That would lead to all kinds of confusion.

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Judge Chamberlin: Nobody would be able to install them.

Mr. Rubrecht: Everybody would have to have an installation made for him.

Mr. Myers: How would you tell whether a man was able?

Mr. Zechiel: The trouble is I have received so many answers that I don't know what the witness said.

Q. Mr. Milliron, did you ever sell in larger quan-

Q. It would not be impossible to make that kind of an order? It would not be an impossible situation?

808 *B. A. Matheres, Cross*

A. Yes, I think it would be impossible to prove as to whether a dealer was capable of buying a pump.

Q. So that you think the natural result of retaining the system at all is that you must lease and loan to anybody whatsoever at your discretion? A. As long as the leasing system is used then if you are leasing to one party you have to treat the other dealers alike and if you want them you have to put them in.

Q. What objection would you have to limiting this business to whatever pumps could be sold outright
809 and to service stations? A. Well, in certain localities service stations are impracticable because they cost too much money. They would not pay. Now, in the larger cities the service station is all right. We could practically take care of the situation if there were no curb pumps either leased or sold and I think some cities—in fact I understand Cincinnati has a city ordinance now that prohibits the installation of curb outfits within the inner fire limits and in that case it drives them to the service station.

Q. Do you think that that is a general tendency throughout the whole state? A. I do not know whether you can apply the word "tendency." I am
810 just giving you one instance.

Q. I am just asking you for your opinion. A. I don't know. I have not heard of it any place else.

Q. Well, go on. I interrupted you. A. I think I am through.

Q. I think I interrupted you in answer to my question as to what objection you would have to retaining only such curb pumps as the retailers would buy outright and service stations. A. Well, the objection is as I state, that there are a number of locations where it would not pay to put in service stations and in that case the curb pump is the only thing that will

take care of the situation and a number of dealers cannot afford to buy them.

Q. Do you think that those dealers who cannot afford to buy them must have pumps in order to distribute the gasoline? A. In order to make it a convenient distributing place for automobile owners, filling place for automobile owners, it is necessary to have them widely distributed.

Q. Do you think there is an over distribution of gasoline pumps compared with the requirements of the trade? A. I think not, not when you consider the enormous increase in registration I do not think 812
there are enough now to take care of another year's increase.

Q. Isn't it a fact that there are frequently a half a dozen service stations and pumps and tanks within one block of each other? A. That is true as to any business. Sometimes they get too close together.

Q. It may be, but I am particularly anxious about this business. A. I think in some localities there are too many service stations. In some localities there are too many pumps, but those are stations.

Q. Then you think there are a great many cases where the service stations are undoubtedly plentiful? A. I think so in certain localities. 813

Q. By service stations I am including curbstone pumps. I mean service in the broader sense. A. Such conditions are exceptional.

Q. But that is true? A. In a few places, yes, they are congested. I can give you—

Q. (Interposing.) Comparing city traffic and travel with rural traffic and travel what can you say about the distribution of filling stations and curbstone pumps as to frequency in a general way? A. Filling stations are all right for congested localities in the city.

814 *B. A. Mathews, Cross*

Mr. Zechiel: I may have said—well I don't know what I said. Read the question.

(Question read.)

A. You mean are there too many or too few?

Q. No, I just want to know how they are, the fact about it. A. That is how they are; that is how many there are.

Q. Yes; how many per block or per mile. A. There is absolutely no rule. It depends altogether on the number of automobiles owned in the locality. There are certain parts of this state that are so hilly
815 and have so many unimproved roads that there are very few automobiles. Now, for instance, between here and Newark there is a pump out towards the edge of town and there is one half way to Newark and then there are pumps at Newark. Those pumps take care of the situation at the present time. Each locality has its own answer.

Q. Isn't it a fact that there are a far less number of pumps and other facilities for securing gasoline in the rural territories than in the cities? A. Less on account of a less number of automobiles. You mean less in proportion to the number of automobiles?

Q. I just mean as a fact; isn't it so? A. Less curb
816 pumps? What is the question?

(Previous question read as follows):

"Q. Isn't it a fact that there are a far less number of pumps and other facilities for securing gasoline in the rural territories than in the cites?" A. Yes.

Q. I think you testified that frequency in distribution of pumps and tanks was an essential convenience to the public. A. Yes; in localities where automobiles are pretty generally owned.

Q. Yes; in the general localities as we know them in this part of Ohio. A. Yes, sir.

Q. Is there any reason why they should be more frequent per mile in the city than in the country? A. Yes.

Q. What is it? A. Because there are more automobiles owned per mile in the city than in the country.

Q. Does that have anything to do with the frequency of obtaining gasoline? A. Yes.

Q. What is the relation there? A. Well, the man in the country, the farmer is willing to drive a mile or two, but the man in the city when he runs out of 818
gasoline wants it within the next square or two.

Q. No difference except psychology? A. No; if you own an automobile it is one of expediency.

Q. It is just as expedient in the country as in the city, isn't it? It always has been with me. It is just as expedient, isn't it? A. If you run out the nearer it is the better you are satisfied.

Q. Therefore, the same rule applies to the rural territory and the city as far as frequency is concerned. I should think so.

Q. Do you believe that from an advertising point of view the leasing and loaning of oil tanks and pumps is a necessity? A. Oh, it is not a necessity, but it is 819
a paying investment.

Q. Would it be possible to advertise through garages who do not lease or loan pumps, but who own their own? A. Not so as to identify our product.

Q. Have you any such identification on any pumps to which you sell gasoline where you do not own the equipment? A. There are a few.

Q. That is a practice, isn't it? A. Not general.

Q. When you testified with respect to the increase of storage capacity due to the introduction of leased oil tanks and pumps you were referring to the fact

that there was with each lease an actual installation of an oil tank and pump rather than the fact that it was a leased pump? A. When we lease an installation we see to it that there is as large a tank as the situation warrants put in so as to make less frequent deliveries.

Q. Has it been your experience that there has been less wisdom displayed along that line by pump dealers who installed pumps than the oil companies who leased pumps? A. They are not interested in the economical delivery of gasoline. They are interested
821 in the sale of the tank and pump.

(Question read.)

A. I would answer yes.

Q. There has been; you say there has been? A. There has been less wisdom on the part of the pump manufacturers than on the part of the oil companies.

Q. Less wisdom on the part of the retailer who installs the pump or who owns his own pump? A. Yes.

Q. How about the territories out in the rural communities; what would be the effect of this order to cease and desist as you understand on the distribution
822 of gasoline in the rural communities? A. Well, the same situation would apply in the rural communities where there are good roads as would apply in the cities. In the rural communities where they have bad roads and hilly conditions, where there are few automobiles, I do not think it would make any difference.

Q. Why is that true? A. Because there are so few automobiles owned in certain districts that there is not much gasoline sold.

Q. And, therefore, they can afford to buy their own pumps and tanks? A. No; there are very few

who can afford to buy their own pumps and tanks in that locality.

Q. Isn't it a fact that those that are there are owned by the retailers? A. Not, altogether, no.

Q. What is your experience along that line? A. Well, I should say we sell as large a percentage to dealers in the rural districts as we do in the cities.

Q. Sell or lease and loan? A. I mean lease.

Q. Do you mean to say that the leases and loans in all rural territory are the same percent of the total installations as they are in the cities? A. That is a mere guess. I have no data.

824

Q. I know but you are acquainted with all this in southern Ohio? A. My general information. From my general knowledge I would have guessed that that would be true.

Q. That is true all over southern Ohio? A. Yes.

Q. If it is a fact and you knew it to be a fact that in certain portions of southern Ohio practically all the pumps are owned by the garage people, would the knowledge of that fact change your answer with respect to the effect of this proposed order to cease and desist? A. No.

Q. I believe you testified that this practice is of particular benefit to small companies and newly organized companies, is that true? A. Yes, sir. 825

Q. That is not your reason for not wanting to discontinue the practice? A. Well, I should say not. We do not usually, necessarily want to do the things that benefit the small company.

Q. You admit it to be a fact? A. Yes.

Q. It is your opinion that in the days when the garage people owned their own oil tanks and pumps there was no greater change in customers among the various oil companies who were competing for that business than there is today under the tank lease and loan system? A. I believe that.

826 *B. A. Mathews, Cross*

Q. From the point of view of the small dealer is there any benefit to him from the lease and loan practice so far as the mixing of gasolines is concerned A. Yes, I think so. I think it is a benefit to him to keep his gasoline separate and put a trade-mark on it.

Q. Is that a practical effect? A. I think so in case his agreement provides that no other gasoline goes through that pump.

Q. Suppose he does not enforce the agreement? A. That is up to him. Then he gets no benefit.

827 Q. What is your experience? Do they enforce that agreement generally or not? A. I do not know about other companies. We do.

Q. If retailers of gasoline to whom you have leased and loaned oil tanks and pumps used competitor's gasoline through those pumps, do you remove the oil tank and pump? A. We would remove the oil tank or pump or we would remove the sign, the trade-mark; that is, if they put other gasoline into the same tank. Now, some of the dealers buy from our competitors and put it into another tank. That we are not interested in.

Q. Couldn't you use that same policy of removing
828 your sign with respect to any other dealer who owned his own pump? A. If he owns his own pump he does as he pleases and you cannot put on a sign or take it off.

Q. Could you refuse to sell to him if he did not? A. If he has no sign, if he has no trade-mark on his tank we do not care whether he puts in other gasoline or not as long as he does not sell it under our brand.

Q. If you wanted to advertise through a retailer, who owned his own pump, you could require him to put a globe there, couldn't you, if he wanted to buy from you? A. No; if he owned his tank and pump.

Q. Isn't it a fact that you could— A. (Interrupting.) We might lease the privilege.

Q. Isn't it a fact that you could refuse to sell him if he did not put a globe up there showing that he was selling your gasoline? A. We could.

Q. Sure; but you would sell to anybody so long as there was no sign up, no matter how much he mixed the gasoline? A. Yes.

Q. And you do do that? A. Yes.

Q. Do you think there is going to be an increase in the number of service stations owned and operated by oil companies? A. I think so. 830

Q. To what extent do you think there will be that increase? A. Well, they will increase as fast as the necessities of the trade demand. In these larger cities especially as the business increases it goes beyond even the curb pump and then the only convenient method is a service station.

Q. Do you think that practically all the business in the large cities will be done in the future— A. (Interrup$ing.) Only in congested districts. In the suburbs it is more like a country town.

Q. There they will use curbstone pumps? A. Yes, sir.

Q. Would that be true if they had to buy their 831
curbstone pumps? A. Sure.

Q. Then regardless of what the Commission do with respect to this order the larger cities will install service stations anyway, won't they? A. In congested districts that is the only way they can supply the trade.

RE-DIRECT EXAMINATION by Mr. Holliday:

Q. Mr. Matthews, as a matter of fact do the retailers who own their own pumps put somebody else's

trade-mark and globe on that pump? A. Not as a rule.

Q. Does your company sell pumps on condition that the owner shall keep your trade-marked globe on the pump? A. No, sir.

Q. In what year would you say occurred the greatest increase in the installation of curb pumps? A. I would say 1917.

Q. How many more pumps and outfits, curb outfits would you say are being used today than in 1913 and '14? A. Why, I have no data on that subject;

833 I would say two or three times as many.

Q. I will ask you whether or not in your judgment, when the installation of curb outfits began to be leased by the oil companies, generally there would have been such a rapid increase in the number of pumps and outfits installed if it had not been for the device of loaning and leasing? A. There would not have been as many.

Q. In that early period could you give an estimate as to what extent the system of loaning and leasing contributed to the meeting the demands of the automobile? A. I do not know as I could.

(Question read.)

834

A. In 1915?

Q. Yes. A. Why, I think it met the demands and practically kept pace with the demands.

Q. I will ask you whether in your judgment it would have met the demands in that way if the installation under this leasing and loaning system had not been devised? A. I think not for the reason that the small dealer could not afford to install the outfit.

RE-CROSS EXAMINATION by Mr. Zechiel:

Q. In your experience where was the first leasing and loaning done? In the large cities or in the rural territory? A. Let's see if I can refresh my memory on that. I can give you the cities where it first started.

Q. Started in the cities then? A. Yes, sir.

Q. That is what I wanted to know.

Mr. Holliday: I think you better name the cities and give the size of them.

Mr. Zechiel: You can ask him that.

Mr. Holliday: No; I am asking him now. 836
Isn't that right?

Mr. Zechiel: No; I am busy.

Q. What size cities were those in population? A. From twenty-five thousand to eight hundred thousand.

Q. What has been the comparative installation under lease contracts in cities with respect to rural districts? A. I think the percentage would be about the same unless it would be in the hilly country and where there are rough roads and few automobiles owned.

Q. Why not there? A. Well, there are a great many people in southeastern Ohio who are a good 837
deal like the Kentucky hill people. They are not up to date.

Q. Would not installations under leases and loans put them up to date? A. You have to educate them before they will come up to date.

Q. But, now, it is a fact that they are not leased and loaned in those territories, isn't it? A. Well, there are a very few owned.

Q. And those are not highly competitive areas, are they? A. Well, they are very competive if not highly.

Q. Are they as highly competitive as the cities where

these very many lease and loan installations are made? A. I should say not.

Q. Isn't it a fact then that leases and loans have developed in the very highly competitive areas? A. I think it is more prevalent in those areas, but the highly competitive areas in Ohio cover very nearly every square foot of ground in Ohio.

Q. You do not have any highly competitive and no low competitive areas then? A. We have no low competitive condition except those possibly in the hills.

Q. Is it also true that in all places except in those
839 low competitive areas you have leases and loans in great frequency as compared with the other territory? A. You do not mean in low competitive—oh, yes, I see what you mean. Yes.

Q. Isn't it your real judgment that a very large part of this leasing and loaning practice has been a result of competition? A. One of the results.

Q. Isn't it your judgment that the reason for lease and loaning was in order to get business rather than as an accommodation to the people in the distribution of gasoline? A. I should say it was done for both reasons.

Q. You had something to do with the management
840 of your company, didn't you? A. What is that?

Q. You had something to do with the management of your company, didn't you? A. I did.

Q. What was your reason? A. Reasons for installing outfits?

Q. Your reason for favoring this lease and loan game. A. It was for the purpose of providing adequate equipment to supply a suddenly increasing trade and for the purpose of meeting competitive conditions.

Q. It was for that then? A. Yes, sir.

Q. Then whether your competitors had done it or not you would have done it? A. I don't know.

Q. It follows, doesn't it, that you did it because you wanted to supply sufficient and adequate distribution facilities; that is one of your reasons, isn't it? A. Yes.

Q. Do you think that that would not have been motive enough to have caused you to do so if there had been no competition along that line? A. I think it would have been motive enough. I think one of the policies of our company and it is with some others, is to keep pace with the demand.

Q. It is a fact that your company would have installed these leases and loans of pumps whether your 842
competitors had or not? A. I cannot say as to that. That condition never arose. It has never been studied and decided.

RE-DIRECT EXAMINATION by Mr. Holliday:

Q. What effect, if any, has this leasing and loaning system had upon new concerns going into the wholesale and jobbing business? A. It has enabled them to establish their business very much more quickly than under the old plan.

Q. Has the effect been pretty extensive? A. Yes.

Q. There have been a good many new companies 843
gone into business as a result? A. A number of them.

Q. Now, in this hill country that you are speaking about to Mr. Zechiel; how large a proportion of the gasoline is handled there in these modern underground tanks with pumps, as compared to the old-fashioned method that you described? A. I should say in that hilly country there would be a very small percentage of the gasoline handled in the modern pump. I would say not to exceed 25 per cent—I do not believe in the hilly country it would exceed 10 per cent of the business handled in the modern pump either leased or owned.

844 *B. A. Mathews, Re-direct*

Q. How many members are there of the Board of Directors of your company? A. Five.

Q. Do you mean then when you say that you cannot tell what your company would do, that what that company would do would depend upon the action of the entire Board of Directors? A. Yes, sir.

RE-CROSS EXAMINATION by Mr. Zechiel.

Q. This hilly country—do you mean in all the low competitive area that not more than 10 per cent of
845 the sale of gasoline is through gasoline curb pumps? A. I would make that estimate in the hilly, sparsely settled section of Ohio—southeastern Ohio.

Q. I prefer that old term, that low competitive area that you testified to awhile ago. Now, think of that term— A. (Interrupting.) I have no data, that is merely a guess.

Q. Would you think that the 10 per cent applies to all that low competitive area? A. I would think so.

Q. Now, you testified that it was your impression that new companies can start in more readily under the lease and loan proposition than they used to in the old form? A. Yes.

846 Q. Upon what do you base that opinion? A. For the reason that if they cannot sell to the dealer who is now doing business they can establish new dealers. They can take store keepers or garage owners who have not been selling gasoline and persuade them to put in a leased pump where they could not sell them and in that way it gives them distributing points that they could not get in other ways.

Q. How many new companies were formed, in your experience, just prior to this leasing and loaning plan? A. Why I have not—

Q. (Interrupting.) Strike the question out. What per cent of the companies existing in Ohio today were either in existence prior to this time or are now a part of a corporation which was in existence prior to the time when leasing and loaning of pumps came into use? A. Well, it would only be an estimate. Seventy-five per cent.

Q. Then seventy-five per cent of the companies started under hard times and twenty-five started under these easy lease and loan periods; that is correct? A. That is my estimate. 848

R. E. GOODWIN was thereupon called as a witness and being duly sworn testified as follows:

Direct-examination by Mr. Taber:

Q. Mr. Goodwin, where do you live? A. Toledo.

Q. What is your present business? A. I am with The Paragon Refining Company.

Q. In what capacity are you with that company? A. I have the general distribution of the product after it is finished.

Q. How long have you been in that capacity? A. 849
Fourteen years.

Q. Fourteen years? A. Yes, sir.

Q. Have you observed the general conditions of the marketing of gasoline in that vicinity? A. In a general way, yes.

Q. You have heard the testimony in chief of Mr. Matthews who was on the stand? A. Yes.

Q. You may state whether or not you find the situation in the same condition or practically so from an economic standpoint that he has related here this afternoon. A. Well, they are practically the same in

850 *R. E. Goodwin, Cross*

our business with the exception of one statement which Mr. Matthews had to make as I understood him that since 1913 he stated that the number of increased pumps and tanks had been three times. My estimate, and it is only an estimate, gathered from information that I receive from our salesmen and the general trade is that it is perhaps increased from ten to fifteen times. In 1913 the pumps were all owned.

Q. When did the leasing of pumps begin in that territory? A. About 1913 or 1914. I am not quite sure.

851

CROSS-EXAMINATION by Mr. Zechiel:

Q. What is your territory, Mr. Goodwin? A. Ohio.

Q. All over Ohio? A. Well, not all over Ohio but we meet—we run into conditions that exist largely throughout the state.

Q. You agree with Mr. Goodwin's testimony? A. Mr. Matthews.

Q. Yes; I beg your pardon. A. Yes, sir.

Q. With the reservation you have made? A. Yes, sir.

852 Q. That is both on direct-examination and cross-examination? A. Yes; I would say that it is substantially correct.

Q. You are going to agree with it now or not? A. Yes, I think I will.

853

C. E. LAUBACH, was thereupon called as a witness and being first duly sworn testified as follows:

Direct-examination by Mr. Rubrecht:

Q. Mr. Laubach, with what company are you interested? A. The Columbus Oil Company.

Q. How many years have you had of experience in handling petroleum products, gasoline and oil? A. Between nine and ten years.

Q. What position do you occupy with the Columbus Oil Company? A. Vice president and general manager.

854

Q. What territory does your company cover in Ohio? A. We cover the Counties of Marion, Miami, Fayette, Greene, Warren, Pickaway, Ross and Fairfield.

Q. How many years has your company been in operation in Ohio? A. Well, the company has been as a corporation since 1914, May, 1914. Prior to that we operated as a partnership.

Q. And prior to that you operated as a partnership for how many years? A. We have operated in Ohio for eight and one-half years.

Q. Eight and one-half years? A. Yes, sir.

855

Q. In both conditions, either in the partnership or under the corporation, were you actively engaged in the marketing of the production? A. Yes, sir.

Q. Oil and gas? A. Yes, sir.

Q. You are familiar then with the custom of handling the products in the territory as to which you have testified? A. Yes, sir.

Q. Now, Mr. Laubach, have you been present all the time and heard the testimony of Mr. B. A. Matthews of the Standard Oil? A. Yes, sir.

Q. Both on chief and on cross-examination? A. Yes, sir.

856 *C. E. Laubach, Direct*

Q. I will ask you to state whether or not your experience and your knowledge would permit you to give the same testimony substantially as he has given? A. Why, I would make the exception that Mr. Goodwin made in reference to the increased number of pumps. I do not know as I would quite agree with Mr. Goodwin. In our territory I do not believe they have increased ten or fifteen times but I would say eight to ten times.

No cross-examination.

857 Mr. Holiday: Mr. Examiner, the Standard Oil Company offers as a part of this case the testimony of the last two witnesses, R. E. Goodwin and C. E. Laubach, and asks that their testimony be included in and treated as a part of the record in the case against the Standard Oil Company.

Mr. Taber: And in regard to the Paragon Refining Company we want to introduce the testimony of B. A. Matthews and C. E. Laubach as part of our case.

Mr. Myers: On behalf of the Ohio Cities Gas Company we wish to introduce the testimony of B. A. Matthews, R. E. Goodwin and C. E. Laubach.

858 Judge Chamberlin: With reference to the Canfield Oil Company, Docket No. 323, we will adopt the testimony of the last three witnesses, B. A. Matthews, R. E. Goodwin and C. E. Laubach as part of the record.

Mr. Rubrecht: We desire on behalf of the Columbus Oil Company to do the same thing, Docket No. 321.

Mr. Taber: I will take the liberty in the absence of Mr. Lippincott to have the testimony of these three witnesses introduced as a part of the testimony in the case of the Lily White Oil Company.

859

Briefs and Arguments.

Mr. Myers: We desire on behalf of the Ohio Cities Gas Company to present written briefs and oral arguments.

Mr. Rubrecht: We desire to make the same request on behalf of the Columbus Oil Company.

Mr. Holiday: The same request by the Standard Oil Company of Ohio may be noted.

Judge Chamberlin: Let the record show the same request on behalf of the Canfield Oil Company.

Mr. Taber: And the same request for arguments and briefs on behalf of the Paragon Oil Company 860
and The Lily White Oil Company.

Mr. Zechiel: It is agreed that the time for filing such briefs as may be filed by respondents shall be thirty days after the taking of the deposition of Mr. MacEwen in Cleveland or after the notice to respondents that such deposition will not be taken, and in case the briefs are to be printed, ten days in addition will be allowed for the printing of the briefs.

Examiner McCorkle: The record will show the request for oral argument and the time for the filing of the briefs.

Whereupon at 6 o'clock P. M., October 30, 1919, the hearing of the above-entitled matters was closed. 861

862 BEFORE THE FEDERAL TRADE COMMISSION.

FEDERAL TRADE COMMISSION, Complainant, vs. THOMAS K. BRUSHART, *et al.*, Respondents.	Docket Nos. 305, 308, 317, 318, 319, 321, 322, 323, 324, 326, 327, 329 (Consolidated).

863 Cleveland, Ohio, November 7, 1919, 2 P. M.

Before: George McCorkle, Examiner.

Met pursuant to notice.

Appearances:

Chester L. Zechiel, Washington, D. C., appearing for the Federal Trade Commission.

Charles M. Buss, of Kline, Neiman, Buss & Moser, 110 East Ohio Gas Building, Cleveland, Ohio, appearing for the Standard Oil Company of Ohio.

864 Mr. Zechiel: Referring to the agreement and understanding of the hearing in Columbus, I want to call as a witness for the Commission Mr. McEwen, to testify on behalf of the Commission in the cases of the Federal Trade Commission versus Thomas K. Brushart, trading under the firm style and name of the Motor Fuel & Lubricating Company, the Ohio Cities Gas Company, the White Star Oil Company, the Paragon Refining Company, the Hickok Producing Company, the Columbus Oil Company, the Carbonless Oil Company, the Canfield Oil Company, the Factory Oil Company, the Independent Distributing

Company, the Lily White Oil Company, Incorporated, the Springfield Oil Products Company, Incorporated, the Lubric Oil Company, Refining Oil Company, Standard Oil Company of Ohio.

W. E. MACEWEN, was thereupon called as a witness, and having been duly sworn, testified as follows:

Mr. Zechiel: In order to make the record complete, I think it might be well understood that any objections made or any evidence taken on cross-examination will accrue to the benefit of all the companies. 866

Mr. Buss: Yes.

Examiner McCorkle: Yes.

Mr. Zechiel: I presume they are looking to you, Mr. Buss.

Mr. Buss: I just heard of this about an hour ago and do not know what notice the others may have had.

Mr. Zechiel: I sent notice to all the attorneys who requested it at the time of our adjournment.

Direct-examination by Mr. Zechiel: 867

Q. With what company are you associated? A. The National Refining Company.

Q. In what capacity? A. Secretary.

Q. What is the territorial extent generally of the National Refining Company's business? A. Our market is of petroleum and its products. Do you want me to enumerate the states?

Q. No, I think if you just give them generally it will be sufficient. A. A territory stretching from Ohio through to Oklahoma, Kansas and Nebraska—

Q. Is that including those states or excluding them? A. Including them, and south into the States of Tennessee and Arkansas.

Q. Do you do business from there north to the United States boundary line? A. Well, to the Ohio boundary line so far as eastern territory is concerned, we do not go east of the Ohio-Pennsylvania line.

Q. And the business that you are engaged in generally? A. We are engaged in producing, refining and marketing of petroleum and its products.

Q. In the course of your business in the State of
369 Ohio, do you send gasoline products and others of your products from one state into Ohio or from Ohio into other states? A. Yes, sir.

Q. In connection with your business as a distributor of gasoline do you also deal in oil tanks and pumps used in connection with the sale or distribution of that product? A. Only to the extent of utilizing them in our own business.

Q. You do not sell or lease or loan them? A. No, sir. I will qualify that by saying we have some few arrangements put in some years ago, but for the last several years we have not engaged in the practice at all, with the exception of two or three cases that I
370 recently entered into in order to save some of our business from another concern that was going to put in equipment.

Q. We will come to those exceptions a little later on. You are acquainted with the general practice of what is known as leasing and loaning of oil tanks and pumps for a nominal consideration? A. Yes, sir.

Q. In the course of your business have you had occasion to come in contact with the distributing and retail centers throughout the territory? A. Yes.

Q. What has been your experience, do retailers of gasoline products generally have installed on their

premises more than one oil tank and pump equipment used in the distribution of gasoline products? A. They generally do not have more than one.

Q. In those cases where they have more than one do they handle the products of competing companies or of one company? A. They usually handle the products of one company. You will find exceptions to that, but they are rather exceptions than the rule.

Q. And that is true in Ohio as well as the other states? A. Yes, sir.

Q. In the course of the business of your company have you ever lost customers or prospective customers, 872
they giving as their reason that they were under contract obligations to use through oil tanks and pumps on their premises the gasoline products only of competitors? A. Will you give me that question again?

Q. (The question was then read as above recorded.) A. We have failed to secure business by reason of such conditions and we have lost business by reason of failing to furnish this equipment where our competitors would furnish it.

Q. To what extent has that been true in your experience in your company? A. We continuously receive complaints from our salesmen that they are unable to secure a greater proportion of the dealers' busi- 873
ness by reason of our policy in not furnishing this equipment.

Q. Is that true in the State of Ohio? A. Yes, sir.

Q. Are the respondents whom I have enumerated here all competitors of yours in the State of Ohio, if you remember the list of respondents? Just take a look at them there (handing paper). A. Most of them are. Some of these companies are rather local companies where we might not be distributing. I would not want to go on record as saying that they all are. The Ohio Cities Gas Company—

Q. Is or is not? A. Is. The White Star Oil Company, Paragon Refining Company, Canfield Oil Company and the Lubric Oil Company and the Standard Oil Company are competitors and the others may be.

Q. When you testified that you had lost customers and prospective business because of this practice of leasing and loaning pumps, were you referring to the loss of business to any of these competitors? A. Yes. The St. Clair Refining Company are not mentioned there, are they?

875 Q. No, and they are not respondents in this case. Would you say that it was true of each of the respondents that are parties to the proceeding here? A. I would say that the general practice, yes, I can specifically state at this time the particular cases where each one would be involved.

Q. But it is your best judgment that the same thing has happened with respect to all these respondents? A. Yes, I would say so.

Q. In your competitive territory? A. Yes.

Q. Would you say that the practice of leasing and loaning pumps for a nominal consideration under these tying agreements or arrangements in the Ohio

876 territory is a desirable practice from the point of view of competition? A. No, I think it is a very undesirable practice and mighty poor merchandising.

Q. What is your reason for your answer, or reasons, just as detailed or elaborate as you please? A. I think whenever you give anything away for nothing somebody pays for it. You are opening the door that to my mind, if it would be approved by the Commission, might lead to even a more extensive practice, as I stated at Washington. We have applications here for trucks. People will go out and solicit and sell oil for us if we will furnish them a truck. And to

put in equipment that will cost seven or eight hundred dollars and expect to get a profit on all the goods to my mind is almost impossible.

Q. Do you believe that there is a call on the part of the public for a more extensive geographical distribution of oil tanks and pumps for their convenience? A. I think that is the tendency of the times, yes.

Q. Do you think that if the Commission were to order and enforce the cessation of this practice of leasing and loaning pumps under the tying contract for a nominal consideration that the result would be a dis- 878
advantage to the public from the point of view of numerical number of distribution centers of gasoline products? A. I do not, because I think the ordinary garage, if the practice was discontinued, from their own standpoint would put in that equipment just the same as they put in a vulcanizer or anything else used in a garage.

Q. How about a smaller retailer, like the groceryman in the smaller communities? A. I think he would put in the equipment necessary to distribute it, depending upon the amount he was distributing.

Q. If you know, how long has this practice been a general practice in the oil industry? A. It has been 879
a practice more or less for a good many years, but not as extensive as probably the last few years.

Q. Say the last three or four or five years? A. The last three or four years.

Q. Prior to that time what per cent of the pumps that are at the present time installed had been installed, prior to say 1914? I am not sure that that question is very clear. A. Well, I would think—you are referring to how many pumps were distributing gasoline as compared with now?

880 Q. Yes, that is the idea. A. I would say a very small percentage as compared with now. I would not be able to answer the question, but from my knowledge of the business I do not think there would be any comparison.

Q. That there are now say three or four times as many pumps? A. Today, yes.

Q. At that time the pumps that were distributed and were being used, were they largely owned by the retailers or were they under lease contracts, in 1914, say? A. So far as my knowledge goes they were
881 very largely owned by the retailers.

Q. Were those retailers in a general way the same class of retailers as retail gasoline today? A. No, they were not as substantial a class. The garage business has had an evolution and Dun and Bradstreet's rating will show that they have evolved from a very uncertain business to one that is more substantial, so that the garage business today is a substantial business.

Q. But so far as actual personnel is concerned, the pump was established and in place and in location in the same sort of garages and with the same sort of grocery men say out in the smaller territories as to-
882 day, is that true? A. No, I think that distribution has probably left the grocery to a considerable extent and gone to the garage or hardware dealer. There has been that change.

Q. What is your experience with respect to the distribution of oil tanks and pumps in the more rural territories so far as whether or not they are in those places under lease or loan contracts or owned by the dealers themselves? A. They are usually—I say usually—in some territory they are nearly all given away or leased or loaned.

Q. Are they more frequently leased or loaned in the rural communities and smaller towns than they are in the large cities, say the size of Cleveland and Columbus and Toledo? A. I think that has been true until recently and they have been going at the large cities, so I am informed by our sales force.

Q. So that it is your impression that in a general way the comparative number of lease and loan contracts in the rural territories and the more urban territories is about the same now and has been about the same for the past three or four years? A. I think it is more extensive. 884

Q. More extensive? Well, I mean the comparative number, comparing the rural territory with the urban territory, the comparative number of lease and loan equipments. A. I think they would be more.

Q. In which territory? A. Both territories.

Q. Well, I am not comparing them as to the time but as to the place, Mr. MacEwen? A. Well, I do not just get the purport of that question. I do not understand it.

Q. Let me ask it in a different way. The per cent of lease and loan equipments in the urban territories as compared with the lease and loan equipment in the rural territories is greater or less in one than in the 885 other? The per cent of the total number of such equipments that are owned privately and also under leased contracts? A. Just what do you mean by urban territory, and then I think I can answer.

Q. The larger cities of fifteen or twenty thousand and on up. A. Well, I think the growth is larger in the urban territories than it would be in what would be commonly called the rural territories.

Q. Is it your opinion or not that if the Commission should interfere with this practice and attempt to stop it that it would compel wholesalers of gasoline to sell

their products through what is commonly known as the service station owned by the oil companies? A. No.

Q. What effect do you think it would have? A. I do not think it would have any effect because of the evolution that is taking place with reference to the Standard Oil Company, as they are filling their filling stations they are discontinuing any allowance to the dealer, that is leaving the dealer open to free competition, you might say, among the independents. It is the practice of the independents as well as the
887 Standard Oil Company in most territories to give the dealer an allowance below the billing station price. That allowance in my opinion is sufficient to justify the dealer buying the equipment and also will enable the independent refinery to get the business, depending upon the salesmanship of its organization. I do not think the filling stations of the Standard Oil Company will have any effect upon us.

Q. Do you think the effect of this order if such an order were made would be to compel the gasoline trade generally to enter into what is commonly called the agency contract with respect to oil tanks and pumps? A. I do not believe I could prophesy as to
888 that.

Q. Just from your experience. Somebody has got to prophesy. These are things they are quarrelling about. A. I think there would be an attempt to do that, sure.

Q. Do you think that the pumps that are now distributed under such lease and loan agreements and those that will be distributed under one form of contract or another either by outright sale or some other plan are more likely to be distributed under agency agreement or by outright sales? A. Well, I would

say if they can get agency agreement that would not be a violation of the Federal Trade Act, they probably would be more under the agency agreement.

Mr. Zechiel: I think that is all.

CROSS-EXAMINATION by Mr. Buss:

Q. I do not know that I care to make any special inquiries except that I would like to get into the record the capitalization of the National Refining Company, Mr. MacEwen. A. The capitalization is $15,000,000, a little over ten millions of which is issued. 890

Q. And as oil producing, refining and marketing companies go, the National is one of the largest, is it not? A. Yes, we might be termed one of the largest. You might not say one of the largest when it comes to marketing through the billing station perhaps, a great many of them are more extensive than we are. Even small jobbing companies will have more billing stations than the National with its big organization.

Q. But your policy in the distribution has been to do it practically entirely through the filling station? A. No, sir; we have towns where dealers are located, where we have every dealer in town. 891

Q. Do you sell them in barrels or tank cars? A. By tank wagons.

Q. In your billing station you charge how much for your gasoline? A. Depending on the territory.

Q. How much in Ohio? A. 28 1/2 cents.

Q. And in the other states it varies? A. It would vary.

Q. Between what range? A. Well, it would probable vary 25 1/2 to 28 1/2 at the maximum. You

862 *W. E. MacEwan, Cross*

might go out into the farther northwestern territory where it might be a little higher than that, depending on the freight rates.

Q. But as a general proposition two or three cents above the usual going rate? A. What do you mean?

Q. Gasoline two or three cents in excess of the ordinary gasoline price? A. Do you mean our price is?

Q. Yes. A. Our price on White Rose gasoline is usually, generally speaking, three cents over what is commonly known as the market.

863 Mr. Buss: That is all.

By Mr. Zechiel:

Q. In that connection about what per cent of your capitalization could be said to be [illegible] in the sale and distribution of gasoline products to retailers? A. It would be very difficult for me without an analysis to say.

Q. I expect it would be, but if you can get at something close to about what would be said to be an overhead or a capital investment with respect to your distribution— A. I would make a guess and say 25 per cent. I might be off on that.

864 Q. Your guess would be better than anybody else's. A. Take our three refineries, they are worth a good portion of that capitalization.

Mr. Zechiel: That is all.

(Witness excused.)

Whereupon, at 2:50 P. M., November 7, 1919, the hearing was adjourned.

Writ of certiorari No. 637. 865

UNITED STATES OF AMERICA, ss:

President of the United States of America, to the Honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, greeting:

Being informed that there is now pending before a suit in which Standard Oil Company (New Jer-) is petitioner, and Federal Trade Commission is pondent, No. 2599, October term, 1920, which suit s removed into the said Circuit Court of Appeals virtue of a petition to review an order of the Fed- l Trade Commission, and we, being willing for cer- reasons that the said cause and the record and pro- 866 dings therein should be certified by the said Circuit rt of Appeals and removed into the Supreme Court the United States,

o hereby command you that you send without delay the said Supreme Court, as aforesaid, the record and ceedings in said cause, so that the said Supreme rt may act thereon as of right and according to law ght to be done.

Witness the Honorable William H. Taft, Chief Jus- e of the United States, the second day of December, the year of our Lord one thousand nine hundred and enty-two.

SEAL.] WM. R. STANSBURY, 867
Chief Clerk of the Supreme Court of the United States.

(Indorsed:) File No. 29,187. Supreme Court of United States, No. 637, October term, 1922. Fed- l Trade Commission vs. Standard Oil Company New Jersey). Writ of certiorari. Received Jan. 11, 23. Saunders Lewis, jr., clerk. Received Jan. 12, 23. Office of the Clerk, Supreme Court U. S.

868 *Writ of certiorari No. 637.*

In the United States Circuit Court of Appeals for the Third Circuit.

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
STANDARD OIL COMPANY OF NEW JERSEY, RESPONDENT. } No. 2599.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme
869 Court of the United States shall constitute the return of the clerk of the United States Circuit Court of Appeals for the Third Circuit to the writ of certiorari granted therein.

JAMES M. BECK,
Solicitor General.
CHESTER O. SWAIN,
JAMES H. HAYES,
Counsel for Respondents.

DEC. 6, 1922.

Endorsements: No. 2599. Stipulation of counsel. Received & filed Jan. 11, 1923. Saunders Lewis, jr., clerk.

870 UNITED STATES OF AMERICA,
Eastern District of Pennsylvania, Third Judicial Circuit, set.:

I, Saunders Lewis, jr., clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original stipulation of counsel as to return to writ of certiorari in the case of Federal Trade Commission, petitioner, vs. Standard Oil Company of New Jersey, respondent, No. 2599, on file, and now remaining among the records of the said court, in my office.

Writ of certiorari No. 638. 871

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 11th day of January, in the year of our Lord one thousand nine hundred and twenty-three, and of the independence of the United States the one hundred and forty-seventh.

[SEAL.] SAUNDERS LEWIS, Jr.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

(Indorsed:) File No. 29187, Supreme Court U. S., October term, 1922. Term No. 637. Federal Trade Commission, petitioner, *vs.* Standard Oil Company (New Jersey). Writ of certiorari and return. Filed 872
January 12, 1923.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, Greeting:

Being informed that there is now pending before you a suit in which Gulf Refining Company is petitioner, and Federal Trade Commission is respondent, No. 2609, October Term, 1920, which suit was removed into the said Circuit Court of Appeals by virtue of 873
a petition to review an order of the Federal Trade Commission, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and removed into the Supreme Court of the United States,

Do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

874 *Writ of certiorari No. 638.*

Witness the Honorable William H. Taft, Chief Justice of the United States, the second day of December, in the year of our Lord one thousand nine hundred and twenty-two.

[SEAL.] WM. R. STANSBURY,
Clerk of the Supreme Court of the United States.

(Indorsed:) File No. 29188. Supreme Court of the United States, No. 638, October term, 1922. Federal Trade Commission *vs.* Gulf Refining Company. Writ of certiorari. Received January 11, 1923. Saunders Lewis, jr., clerk. Received Jan. 12, 1923, Office of the Clerk, Supreme Court, U. S.

875

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

FEDERAL TRADE COMMISSION, PETITIONER,
vs.
GULF REFINING COMPANY, RESPONDENT. } No. 2609.

Stipulation as to return to writ of certiorari.

It is hereby stipulated by counsel for the parties to the above-entitled cause that the certified copy of the transcript of the record now on file in the Supreme Court of the United States shall constitute the return
876 of the clerk of the United States Circuit Court of Appeals for the Third Circuit to the writ of certiorari granted therein.

JAMES M. BECK,
Solicitor General.
CHESTER O. SWAIN,
JAMES H. HAYES,
Counsel for Respondents.

DEC. 6, 1922.

Endorsements: No. 2609. Stipulation of counsel. Received and filed Jan. 11, 1923, Saunders Lewis, jr., clerk.

Writ of certiorari No. 639. 877

UNITED STATES OF AMERICA,

Eastern District of Pennsylvania, Third Judicial Circuit, set.:

I, Saunders Lewis, jr., clerk of the United States Circuit Court of Appeals for the Third Circuit, do hereby certify the foregoing to be a true and faithful copy of the original stipulation of counsel as to return to writ of certiorari in the case of Federal Trade Commission, petitioner, vs. Gulf Refining Company, respondent, No. 2609, on file, and now remaining among the records of the said court in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 11th day of January in the year of our Lord one thousand nine hundred and twenty-three and of the Independence of the United States the one hundred and forty-seventh. 878

[SEAL.] SAUNDERS LEWIS, JR.,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

File No. 29188. Supreme Court U. S., October term, 1922. Term No. 638. Federal Trade Commission, Petitioner, vs. Gulf Refining Co. Writ of certiorari and return. Filed Jan. 12, 1923.

UNITED STATES OF AMERICA, ss: 879

The President of the United States of America, to the honorable the Judges of the United States Circuit Court of Appeals for the Third Circuit, greeting:

Being informed that there is now pending before you a suit in which Maloney Oil and Manufacturing Company is petitioner, and Federal Trade Commission is respondent, No. 2632, which suit was removed into the said Circuit Court of Appeals by virtue of a petition to review an order of the Federal Trade Commission, and we, being willing for certain reasons that the said